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JURY TRIAL DAY 2
JURY IMPANELMENT
SEPTEMBER 9, 2009
9:21 a.m.

VALERIE A. O'HARA
OFFICIAL COURT REPORTER

1 A P P E A R A N C E S:

2 ROSEMARY CURRAN SCAPICCHIO, ATTORNEY, Four Longfellow
3 Place, Boston, Massachusetts 02114, for the Plaintiffs;

4 Tommasino & Tommasino, by MICHAEL W. REILLY, ESQ.,
5 Two Center Plaza, Boston, Massachusetts 02108, for the
6 Plaintiff;

7 Roache & Malone, LLP, by JOHN P. ROACHE, ESQ., 66 Long
8 Wharf, Boston, Massachusetts 02110, for the Defendants.

9 Bletzer and Bletzer, P.C., by HUGH R. CURRAN, ESQ., 300
10 Market Street, Brighton, Massachusetts 02135, for the
11 Defendants;

12 Law Offices of William M. White, Jr. and Associates,
13 WILLIAM M. WHITE, JR., ESQ., 218 Lewis Wharf, Boston,
14 Massachusetts 02110;

15 Morgan, Brown & Joy, LLP, by MARY JO HARRIS, ESQ., 200
16 State Street, Boston, Massachusetts 02109-2605, for the
17 Defendants.
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PROCEEDINGS

(THE FOLLOWING OCCURRED IN THE JUDGE'S LOBBY:)

MR. ROACHE: Your Honor, to make things simpler, I'm going to waive request for the additional three peremptories.

THE COURT: Fabulous.

MR. ROACHE: It will go quicker today.

THE COURT: Is there anything else you want to waive? I want to take advantage of this mood. Okay. That's fine.

MR. ROACHE: I also, your Honor, I have an investigator waiting for the CORI.

THE COURT: I signed them.

MR. ROACHE: Gave it to him?

THE CLERK: Yes, certified, done, everything.

MR. ROACHE: Thank you.

MR. REILLY: Your Honor, I had 13.

THE COURT: Yes, 13. There are 11 remaining for the group that we had screened. We picked 14, three on each side. We need to get to 20. Hi.

THE JUROR: Good morning.

THE COURT: You are Ms. Longo?

THE JUROR: Yes.

THE COURT: Why don't we start with you, Ms. Scapicchio.

1 MS. SCAPICCHIO: Hi, my name is
2 Rosemary Scapicchio. Together with Mike Reilly, we
3 represent the Shawn Drumgold. He's the plaintiff in this
4 case. We're going to ask you a couple of questions
5 regarding your questionnaire. To clarify, you indicated
6 regarding No. 22 you had a lawsuit pending regarding a
7 breach of a fiduciary duty. Would the experience that you
8 have with that lawsuit, does it affect you at all in terms
9 of deciding this case?

10 THE JUROR: I wouldn't think that it would.

11 MS. SCAPICCHIO: Okay. And you also indicated on
12 your questionnaire at No. 27 when you were asked people who
13 have been wrongfully convicted sometimes bring lawsuits
14 against the police department. Do you favor or oppose those
15 type of lawsuits? You say you favor this option because it
16 exists even though it may not always been warranted. Can
17 you tell me what you mean by that?

18 THE JUROR: I don't always think a law enforcement
19 officer would do the wrong thing, but there's a possibility
20 that that would happen, so we all need to have a right to
21 pursue that, to protect ourselves.

22 MS. SCAPICCHIO: When you say you don't always
23 think that a law enforcement officer person would do the
24 wrong thing, in this case, you're going to hear testimony if
25 you're selected as a juror from police officer witnesses and

1 civilian witnesses, and the allegation in this case is
2 Detective Callahan, who's the defendant, withheld some very
3 important information from the prosecutors in the case, and
4 it resulted in Shawn Drumgold getting an unfair trial.

5 If you were asked -- given your statement, if you
6 were asked to decide between the testimony of a police
7 officer and the testimony of a civilian witness, would you
8 give the police officer's testimony any more weight?

9 THE JUROR: No.

10 MS. SCAPICCHIO: Okay.

11 THE JUROR: I really feel like I could be
12 impartial, and I feel -- I don't know this will make any
13 sense, when I had to prepare to be certified for preschool
14 teacher, I had to take a class on observing children, and I
15 had to block everything else out and focus on what I was
16 seeing and only Judge on that, and I did very well, so I
17 think it would be the same process here for me.

18 MS. SCAPICCHIO: Okay. If you listened to all the
19 evidence in this case and you decided that Shawn Drumgold
20 had met its burden and had proved that Detective Callahan
21 withheld this information and it affected his right to a
22 fair trial, would you be able to award money damages to
23 Shawn Drumgold?

24 THE JUROR: Yes, I think I would if I felt that
25 what you just said took place.

1 MS. SCAPICCHIO: Thank you so much.

2 THE JUROR: You're welcome.

3 MS. HARRIS: Good morning. My name is
4 Mary Jo Harris, and I along with Hugh Curran represent
5 Detective Callahan. Could you tell me one of the lawsuits
6 that you referenced in your questionnaire, are you one of
7 the plaintiffs in this case?

8 THE JUROR: I'm the plaintiff.

9 MS. HARRIS: How long has it been pending?

10 THE JUROR: It began in January of 2008.

11 MS. HARRIS: You said you're in discovery right
12 now?

13 THE JUROR: I think we're going toward the end of
14 discovery. My sister ignored for almost a whole year all
15 the legal papers she was being served, so it sort of like
16 dragged this whole thing out.

17 MS. HARRIS: Okay. Have you actually been deposed
18 in that case?

19 THE JUROR: No. What do you mean by deposed? We
20 haven't been to trial or anything like that.

21 MS. HARRIS: Right. A deposition is somewhat sort
22 of similar to this in that there's a court reporter, there's
23 a question and answering of witnesses giving evidence in a
24 case.

25 THE JUROR: No, no.

1 MS. HARRIS: Have you ever testified in any
2 capacity?

3 THE JUROR: No.

4 MS. HARRIS: One of the ways that this case will
5 proceed, because it's a civil case, is that Ms. Scapicchio
6 will have the opportunity to put on her evidence, and
7 obviously the reason we're here is because, you know, we
8 believe that there's a very different version of events and
9 we would be expecting anybody that sat on the jury to be
10 able to sort of suspend their judgment until all of the
11 evidence has been heard and then make a judgment based on
12 that the evidence that's presented in the court and then the
13 instructions you're given by the Judge. Do you think that's
14 something you'd be able to do in this case?

15 THE JUROR: Yes, I do.

16 MS. HARRIS: Gentleman, do you have anything?

17 MR. ROACHE: Just one question, what court is in
18 your pending lawsuit?

19 THE JUROR: In Brockton so that's Plymouth.

20 MR. ROACHE: Is it probate court or superior?

21 THE JUROR: I think it's superior.

22 MR. ROACHE: Who represents you?

23 THE JUROR: Morisi & Oatway, M-o-r-i-s-i, &
24 Oatway.

25 MR. ROACHE: Do you know who represents your

1 sister?

2 THE JUROR: Eileen Belinsky in Brockton,
3 B-e-l-i-n-s-k-y. My attorney's name is Andrew Oatway.

4 MR. ROACHE: Thank you. That's all I have, thank
5 you.

6 MS. SCAPICCHIO: Thank you very much.

7 THE COURT: I'm going to ask you to call this
8 number this afternoon after 6:00. You're not on the final
9 jury yet, and whether you're on the final jury, you'll find
10 out at that point. You have your juror number, and you plug
11 in the juror number, and we'll see you 9:00 Thursday morning
12 if you're on the final jury.

13 THE JUROR: Thank you so much.

14 MS. SCAPICCHIO: Thank you.

15 MS. HARRIS: Can we ask something, in the
16 questions the characterization of withholding important
17 evidence I'm a little bit afraid, fearful of putting forward
18 facts that aren't exactly consistent with the law as it's
19 being argued, so I would just ask for your guidance.

20 THE COURT: What's your objection to saying
21 withholding important evidence?

22 MS. HARRIS: Very important evidence I think is
23 the way I think it's being phrased, and I think that's an
24 issue.

25 MR. CURRAN: The standard is exculpatory evidence,

1 important evidence one way or the other is not meeting that
2 legal definition.

3 THE COURT: But she's found that exculpatory
4 evidence is not necessarily a word that people understand.

5 MS. SCAPICCHIO: Exculpatory evidence doesn't mean
6 anything to these jurors.

7 MR. CURRAN: Otherwise we're going to start asking
8 questions and putting forth our facts, and, you know, in our
9 view of what the law is in front of these jurors.

10 MS. HARRIS: I'm trying to avoid the knowing and
11 deliberate.

12 THE COURT: What would you suggest?

13 MS. HARRIS: I'd suggest if you found that he
14 withheld evidence.

15 THE COURT: I think that's fine.

16 MS. SCAPICCHIO: Just withheld evidence.

17 MS. HARRIS: To be neutral.

18 MR. ROACHE: I would ask, Judge, that once the
19 jury is selected that there's some sort of limiting
20 instruction that any questions that were asked within the
21 voir dire not be -- they have to understand that that's not
22 evidence.

23 THE COURT: By all means, I'll do that. Okay.

24 MS. HARRIS: Thank you.

25 THE CLERK: Next one is 25.

1 THE COURT: Mr. Meza, Salomon Meza. Mr. Meza, why
2 don't you sit down. It will be short question for a short
3 time.

4 MS. HARRIS: Good morning.

5 THE JUROR: Good morning, everybody.

6 MS. HARRIS: My name is Mary Jo Harris, and I
7 represent Detective Tim Callahan along with Hugh Curran, and
8 we're the defendants in this case. I noticed in your
9 questionnaire you reported having been charged with an
10 assault and battery at some point?

11 THE JUROR: Yes.

12 MS. HARRIS: Can you tell me when that happened?

13 THE JUROR: It happened in 1996.

14 MS. HARRIS: Okay. Did that occur here in Boston?

15 THE JUROR: It occurred in Waltham, the city.

16 MS. HARRIS: Waltham. Going through that
17 experience, did that cause you to question the fairness or
18 the impartiality of the criminal justice system or of the
19 police that you encountered?

20 THE JUROR: Actually I want to go back how it
21 happened just quickly. I came from Peru, I was born in Peru
22 with my wife and my two stepsons, so as you must know, we
23 used to be educating in different way than the American
24 culture, so when they were in the high school, they changed
25 their behavior and so they disrespect us, me, so my first

1 impulse was slapping a couple times, and then I think it was
2 advisable, you know, classmate that they should charge me so
3 that's why I was called to the courthouse in Waltham so the
4 Judge decided I should go someplace like violence, control
5 violence, stuff like that, so it was in one jail, probation.
6 After that, I don't happen, I didn't have any case else. It
7 was the first and the last time. I learned.

8 MS. HARRIS: So you felt from what you're saying I
9 take from that that you felt you were treated fairly by the
10 law enforcement agency?

11 THE JUROR: Yes, according to the American law, I
12 did, so I recognize that I shouldn't do that so I wasn't
13 guilty, that's it.

14 MS. HARRIS: And then there was another question
15 that we had in this questionnaire that asks, you know,
16 people who have been wrongfully convicted sometimes bring
17 lawsuits against the police, and you were asked if you favor
18 or oppose this kind of a lawsuit, and you said that you
19 opposed, so I'm wondering if you could tell us a little bit
20 about your feelings.

21 THE JUROR: Excuse me, could you repeat again?

22 MS. HARRIS: Yes. People who have been wrongfully
23 convicted sometimes bring lawsuits against the police
24 department. Do you favor or do you oppose this type of a
25 lawsuit?

1 THE JUROR: Okay. What the thing is, when there
2 is not enough evidence sometimes, some lawyer, I don't want
3 to say bad lawyer, but lawyers, you know, according to the
4 economic situation with the person go to the courthouse
5 without looking, they can't afford a lawyer, so I was being
6 advised by my lawyer, I mean, the Court put a lawyer for me
7 be guilty, say guilty, but I didn't have the chance that I
8 speak by myself in the courthouse to the charge, say I'm
9 sorry, I didn't realize that I shouldn't hit my stepson
10 because it was my culture, yes, it came from my origin in my
11 country, so I think New England, they should send to one
12 special place, like a school, teach how to act, how to live
13 with the kids in the United States before making any
14 mistakes.

15 MS. HARRIS: So, if I understand what you're
16 saying, would you say with this question sometimes you think
17 that a wrongful conviction can occur for reasons other than
18 the law enforcement?

19 THE JUROR: Exactly. I think the person must be
20 convicted of evidence really, really did that in the United
21 States.

22 MS. HARRIS: I'm sorry, I didn't understand
23 that.

24 THE JUROR: What I'm trying to say is the person
25 must be convicted of the crime that he did, that's what I'm

1 trying to say.

2 MS. HARRIS: Gentlemen, do you have anything else?

3 MR. ROACHE: I have nothing.

4 MS. SCAPICCHIO: Good morning. My name is
5 Rosemary Scapicchio. I think I'm a little unclear with your
6 answer regarding the lawsuits. Are you saying that unless
7 somebody can prove that they're actually innocent you
8 wouldn't favor these type of lawsuits?

9 THE JUROR: What I think is when someone is
10 demanding, for example, like a committee or whatever, if
11 this guy really, really there is strong evidence that he may
12 have that he committed the crime, no question about it, I
13 believe in that.

14 MS. SCAPICCHIO: Okay. So are you saying then
15 that if you believe that the evidence showed that the person
16 committed the crime, whether his civil rights were violated
17 or not, you wouldn't find in his favor?

18 THE JUROR: Exactly.

19 THE COURT: If we told you that the law was that
20 every citizen is entitled to a fair trial.

21 THE JUROR: Right.

22 THE COURT: And that they are entitled to sue
23 officials if those officials are responsible for their not
24 having a fair trial and their innocence or guilt doesn't
25 matter, they can still say because of what you did my trial

1 was unfair and collect damages for that, would you be able
2 to follow those instructions?

3 THE JUROR: I don't really understand.

4 THE COURT: Let me try it again. Let's assume I'm
5 accused of a crime, okay, and I did it but the trial wasn't
6 a fair trial, evidence was withheld, it's not shown to me
7 that I should have seen and other things made it unfair, I
8 can go into court and I can sue officials that made my trial
9 unfair even though I'm guilty because I have a right to a
10 fair trial. That's what the allegations here are about.
11 Would you be able to sit as a juror and follow the law in
12 this kind of situation? In other words, it doesn't matter
13 whether I'm innocent or guilty, I'm entitled a fair trial?

14 THE JUROR: If I was in this person's position, if
15 I'm honest?

16 THE COURT: No, we're talking about you as a
17 juror, if you're a juror here, could you sit on a case in
18 which an officer is accused of doing something that made the
19 trial of Mr. Drumgold unfair? That's what the nature of the
20 accusation is, it doesn't matter if he did the crime or not,
21 it only matters that the claim was that the trial was
22 unfair, could you be a juror in that kind of a case?

23 THE JUROR: Honestly, I don't know what to
24 answer.

25 THE COURT: Well, if you're not sure, then we'll

1 excuse you, but thank you very, very much for coming in.

2 Thank you, sir.

3 MS. SCAPICCHIO: Thank you.

4 MS. HARRIS: Thank you.

5 THE COURT: Hi, Mr. Schwartz, come sit down. I
6 think you start, Ms. Scapicchio.

7 MS. SCAPICCHIO: Good morning, Mr. Schwartz. My
8 name is Rosemary Scapicchio. Together with Mike Reilly, we
9 represent Shawn Drumgold. He's the plaintiff in this case.
10 We expect that you will hear evidence in this case that
11 during Shawn Drumgold's criminal trial back in 1989
12 Detective Callahan withheld evidence that resulted in
13 Shawn Drumgold not having a fair trial. If you were asked
14 to evaluate the testimony of a police officer vs. that of a
15 civilian witness, would you give the police officer any more
16 weight?

17 THE JUROR: I probably would.

18 THE COURT: Okay. So the question is, we're
19 looking for jurors for whom the playing field would be
20 equal, both sides. It means that an officer is testifying,
21 he doesn't start, if an officer starts one way and a
22 civilian starts one way, doesn't start with a leg up. You
23 think it would be hard for to do?

24 THE JUROR: I think I could, but I'm just saying I
25 tend to believe a police officer more than a civilian.

1 THE COURT: That's what this case is about, a
2 civilian will say X and the police officer will say Y, and
3 if there's any concern that you have that you wouldn't be
4 able to evaluate the testimony equally, then we'd have to
5 excuse you. What do you think?

6 THE JUROR: I would do my very best, and I think I
7 could.

8 THE COURT: Okay. Go on.

9 THE JUROR: That's my honest opinion.

10 MS. SCAPICCHIO: When you were talking about your
11 honest opinion, you would credit the police officers's
12 testimony. Can you tell us why?

13 THE JUROR: I think when I'm told something by a
14 police officer, I would tend to believe it's the truth.

15 MS. SCAPICCHIO: If you had to listen to a police
16 officer tell one version and listen to a civilian witness
17 tell another version, would you give the edge to the police
18 officer because they're supposed to believe the police
19 officer?

20 THE JUROR: I do my best not to, but I think it's
21 a possibility.

22 THE COURT: I'll excuse you. They'll be other
23 cases where there won't be this kind of collision. Thank
24 you so much. Thank you.

25 MS. SCAPICCHIO: Judge, this next juror says that

1 he has business trips throughout October.

2 THE JUROR: Good morning.

3 THE COURT: Good morning. This is Mr. Bacon.
4 Okay. Start.

5 MS. HARRIS: Hi, Mr. Bacon, my name is
6 Mary Jo Harris, and I along with Hugh Curran represent
7 Detective Callahan who's the defendant in this case, and
8 we're all wondering, you indicated you had business trips
9 throughout October. As a first matter, what kind of
10 schedule are you looking at?

11 THE JUROR: Well, I was scheduled to be in the
12 office only two or three days during October. I visit all
13 of our plants for our company every October, so, I mean, I
14 can show you the schedule.

15 THE COURT: No, no, tell us now. The trial as we
16 said will go to October 15th. You have business trips
17 scheduled between now and October 15th?

18 THE JUROR: Actually longer than that.

19 THE COURT: But the trial is going to be over the
20 15th, so the question, you'll be out of town?

21 THE JUROR: I'll be out of town October 1st, 2d,
22 6th, 7th 13th and 15th.

23 THE COURT: I'll excuse you. Thank you very much.

24 MS. HARRIS: Thank you very much for coming in.

25 MS. SCAPICCHIO: Thank you.

1 THE COURT: Hi.

2 THE JUROR: Hi.

3 THE COURT: You are Ms. Barile?

4 THE JUROR: Barile.

5 MS. HARRIS: Good morning, my name is
6 Mary Jo Harris.

7 THE JUROR: Good morning.

8 MS. HARRIS: Along with Hugh Curran, we represent
9 Detective Callahan in this suit, and as we explained
10 yesterday, this is a case arising out of a wrongful
11 conviction and police misconduct claim. One of the
12 questions that was in our questionnaire asked if you favored
13 or opposed suits like this, and we noticed that you didn't
14 answer. I'm curious to know what your thoughts are on this
15 kind of case?

16 THE JUROR: Well, I think I answered the question
17 before I knew what the case was.

18 MS. HARRIS: Okay.

19 THE JUROR: So, and the reason I didn't answer the
20 question was for me it would determine like what the case
21 is.

22 MS. HARRIS: Okay.

23 THE JUROR: And after like hearing like both sides
24 like what my decision would be.

25 MS. HARRIS: Okay. So if I understand you

1 correctly, you can only decide if it was a wrongful
2 conviction after you heard the evidence from both sides?

3 THE JUROR: Pretty much.

4 MS. HARRIS: Have you served as a juror before, I
5 think you said no?

6 THE JUROR: No, I've been called for jury duty but
7 I've never been chosen.

8 MS. HARRIS: Then I'm not trying to pry into your
9 personal business, but you had mentioned that friends and
10 colleagues of yours have been charged on different drug
11 offenses or offenses?

12 THE JUROR: Yes, November of this year will be six
13 years that I've been in recovery, and so in the past six
14 years that I've been clean, I've met a lot of people in
15 recovery, and unfortunately they did some bad things in the
16 past before they got clean, so that's why I have many
17 friends that have been locked up.

18 MS. HARRIS: Oh, sure. Has there been anything
19 about your relationships or anything that they've told you
20 that's caused you to question the ethics or the integrity of
21 the civil justice system or of the police in general, any
22 experiences that they shared with you?

23 THE JUROR: Not really. I mean, they pretty much
24 knew what they did was wrong, you know, and they got caught
25 and they had to do the time, you know.

1 MS. HARRIS: You know, the case here involves, you
2 know, a stark difference of opinion about what actually
3 happened, but there are going to be civilian witnesses, some
4 who may have had criminal backgrounds and police officers
5 testifying, and there may even be some lawyers testifying.
6 Would the nature of their backgrounds or their occupations
7 weigh in any way in the credibility that you ascribe to each
8 of these witnesses, in other words, would you take the word
9 of a lawyer or a police officer over the word of a civilian
10 who maybe had a record?

11 THE JUROR: Well, for me because the people that I
12 know now such as like the people that were criminals after
13 being clean, they're not the same people anymore, and they
14 live good, honest lives, and they change, so would I take
15 someone's opinion that may have been a criminal before,
16 possibly, if they're being honest now, you know what I mean,
17 does that make sense?

18 MS. HARRIS: I think so. I think I understand
19 what you're saying.

20 MS. HARRIS: Do you guys have anything further?

21 MR. ROACHE: Follow up with that, if you knew that
22 certain witnesses that are going to testify in this case did
23 have a criminal background and they may not have a
24 background in the last couple of years and may have been
25 trying to set their lives straight, would you tend to

1 believe their testimony more than that of a police officer
2 or less than that of a police officer?

3 THE JUROR: I guess I'd have to determine on how
4 good they sounded, like how like if I believed their
5 testimony or not. I don't know.

6 MS. HARRIS: Okay. If you heard evidence that a
7 witness was a drug dealer years ago but claims not to be a
8 drug dealer any longer, would that impact you as to
9 assessing that person's credibility today?

10 THE JUROR: Yeah.

11 MS. HARRIS: How would that impact you?

12 THE JUROR: I don't know how to answer that. I
13 guess I would just -- by like being able to like hear all
14 parts of case and like that, you know, knowing that about
15 that individual like then I guess that's how I would like
16 decide like how I would go. I don't know what to say
17 really.

18 THE COURT: I think that's enough.

19 MR. ROACHE: Have you had personally any bad
20 experience with law enforcement?

21 THE JUROR: No. I haven't had a bad experience
22 with law enforcement. As police officers?

23 MR. ROACHE: Yes.

24 THE JUROR: I have not, but I have had family
25 members who have been police officers, and they haven't said

1 such nice things about other officers that they worked
2 with.

3 MR. ROACHE: Would that impact you as assessing
4 the credibility of a police officer who may be testifying in
5 this case?

6 THE JUROR: Well, nothing against you, but it
7 would. It would because I know like what -- you can't not
8 know what you've already heard, you know what I mean? Does
9 that make sense? Like I can't take like what a family
10 member has said to me and say, okay, I'm just going to
11 dismiss that and take that out of my mind. It's in my mind,
12 you know, so, of course, like it would impact my thoughts on
13 like the case.

14 THE COURT: Well, so you're someone who's known
15 civilians who have gotten in trouble, and you're also
16 someone who has heard of police officers who haven't done
17 good things.

18 THE JUROR: Right.

19 THE COURT: So the question is whether in this
20 case you'd be able to listen to a witness, civilian or a
21 police, and be able to hear that and make a decision as to
22 that person's credibility, not on what else you've heard, on
23 that credibility, you'd have to listen?

24 THE JUROR: I'd be able to listen, but I would
25 tell you that would be in the back of my mind.

1 THE COURT: So that would make you lean against
2 the officers? In other words, what's in the back of your
3 mind, is that going to make everybody in the same soup,
4 everybody looks bad to you, or does that make everybody
5 even, or is that going to mean you're going to tilt on one
6 side or the other?

7 THE JUROR: I guess I would make a decision after
8 I heard everything about the case. You know what I mean, I
9 couldn't tell you that right now because I don't know the
10 whole case right now.

11 THE COURT: That's fair. Go on.

12 MR. CURRAN: Judge, one question.

13 THE COURT: Mr. Curran.

14 MR. CURRAN: You had the information in the back
15 of your mind that members of law enforcement have shared
16 with you that there aren't good things about other police
17 officers. As you sit here today, are you able to say that
18 that won't play a role in you evaluating the testimony of
19 police officers that are going to testify in this courtroom
20 under oath on the stand? Are you able to totally remove
21 that? Could you say with 100 percent certainty and
22 confidence that that will not play a role in you deciding?

23 MS. SCAPICCHIO: Judge, I would object. I don't
24 think that's the standard.

25 THE COURT: I think that's right. You don't have

1 to answer that question. Go on, Ms. Scapicchio.

2 MS. SCAPICCHIO: If I hear what you told
3 Judge Gertner is that you've had experiences or you've heard
4 experiences with police officers, you've had experiences
5 with people with criminal records, but in this case you
6 would listen to the evidence, and you would make a
7 determination after you heard the person testify?

8 THE JUROR: Uh-hum.

9 MS. SCAPICCHIO: Nobody would start with any edge
10 one way or the other, you would just listen to the evidence?

11 THE JUROR: Right.

12 MS. SCAPICCHIO: I have no further questions.

13 THE JUROR: Can I say something real quick?

14 THE COURT: Yes, go right ahead.

15 THE JUROR: Yesterday when you said is there any
16 person that can't stand on the trial, I can, I'm going away
17 a couple days though.

18 THE COURT: When?

19 THE JUROR: September, this Monday, the 14th and
20 15th and the 18th, but the 18th is a Friday, and I know that
21 you said it's Monday through Thursday, so that one really
22 don't count.

23 THE COURT: The 14th and 15th you're going to go
24 away, prearranged vacation?

25 THE JUROR: Yes.

1 THE COURT: That would be a problem. Okay. I'm
2 sorry, you should have told us that at the beginning.

3 THE JUROR: I was nervous. I didn't want to stand
4 up. I didn't want to be the only person to stand up.
5 Sorry.

6 THE COURT: This is a prearranged vacation going
7 where?

8 THE JUROR: I have tickets to go to New York.

9 THE COURT: For the 14th and the 15th?

10 THE JUROR: Yes.

11 THE COURT: Okay. I'll excuse you. This has been
12 wonderful. Thank you.

13 MS. SCAPICCHIO: Thank you very much.

14 THE JUROR: Am I in trouble?

15 THE COURT: You're in big trouble. I'm only
16 kidding.

17 Mr. Quigley.

18 THE JUROR: Yes.

19 THE COURT: Ms. Scapicchio, you go first.

20 MS. SCAPICCHIO: Hi, my name is Rose Scapicchio.
21 Together with Mike Reilly, we represent the plaintiff in
22 this case, Shawn Drumgold.

23 THE JUROR: Okay.

24 MS. SCAPICCHIO: I noticed in your questionnaire
25 you indicated at question 24 that you had some relationships

1 with people on the Cambridge Police Department and the
2 Holyoke Police Department?

3 THE JUROR: Uh-hum.

4 MS. SCAPICCHIO: In this case we expect that
5 you'll hear evidence from police officers and evidence from
6 civilian witnesses, and the allegation that Shawn Drumgold
7 is making is that Detective Callahan withheld some
8 information from the prosecutors in this case that resulted
9 in him getting an unfair trial.

10 THE JUROR: Okay.

11 MS. SCAPICCHIO: If you had to listen to evidence
12 with police officers, given your friendship with police
13 officers and evidence from civilian officers, would the
14 police officers get an edge at all?

15 THE JUROR: I don't think so.

16 MS. SCAPICCHIO: Why not?

17 THE JUROR: I mean, why not, that's a good
18 question. I mean, because they're all the same. I don't
19 think that there's any more -- I mean, maybe you feel better
20 that the police officer is telling you, but it doesn't
21 necessarily mean that they couldn't be telling the story as
22 well as somebody else.

23 MS. SCAPICCHIO: Just to follow up, when you say
24 you feel better that the police officer is telling you, can
25 you tell me what you mean by that?

1 THE JUROR: Well, I mean, just because growing up,
2 you know, as a kid, you always respected the police officers
3 and stuff like that, so maybe they hold a little more weight
4 when they make a statement than somebody else, I don't know.
5 I don't think I'd make it, but personally I don't think it
6 makes a difference.

7 MS. SCAPICCHIO: Okay. So when you say police
8 officers would hold a little more weight, if you had to
9 evaluate a police officer's testimony that was in conflict
10 with a civilian witness' testimony, would that idea that
11 police officers carry a little more weight come into your
12 decision-making in this case?

13 THE JUROR: I'm sure it might be possible. I
14 mean, I don't personally think right now, but it might.
15 It's like growing up, you always, you know, were told, you
16 know, to respect the police officer and stuff like that, so
17 whether that would -- I wouldn't -- I'm trying to think how
18 to put this. I don't think I would consciously make that
19 statement, but I don't know.

20 MS. SCAPICCHIO: All right. So you'd give the
21 police officers a little more weight because of the way you
22 grew up?

23 THE JUROR: Yes, I think so.

24 MS. SCAPICCHIO: That took a long time to get out.
25 Let's see if we can try this again. The police officer

1 testifies that the light is green, the civilian testifies
2 that the light is red, are you going to believe the police
3 officer just because he's a police officer and for no other
4 reason?

5 THE JUROR: No, I don't think so. I think the
6 thing there they'd have to be more information. That's not
7 enough information to make a judgment either way.

8 THE COURT: So you'd struggle, you'd treat him
9 like you would any other witness?

10 THE JUROR: Yeah, I think so.

11 THE COURT: When you said everyone grew up
12 respecting police, you said that that may be in the back of
13 your mind, but you would struggle against that, you'd try to
14 evaluate the testimony?

15 THE JUROR: Yes. Part the problem there is my
16 father was a fireman, so all those -- I mean, I had a lot of
17 dealings with policemen when I was younger because that's
18 who he knew, those people and stuff like that, so I think
19 that's where I would base that, my feelings on that from
20 growing up like that.

21 THE COURT: But the question, go back to that,
22 this is a terribly important question.

23 THE JUROR: No, I understand.

24 THE COURT: There may be issues in this case in
25 which there's one version that comes from an officer and one

1 version that comes from a civilian. We want jurors who will
2 evaluate what they're listening to and hear it and not
3 jurors who would say police officer never lies?

4 THE JUROR: No, I wouldn't go that far.

5 THE COURT: Okay.

6 MS. HARRIS: Thank you. Good morning, sir. My
7 name is Mary Jo Harris, and I represent Detective Callahan
8 along with Hugh Curran here. This is a case where the
9 plaintiff is alleging a wrongful conviction, and that's
10 actually in the questionnaire, and you indicated that when
11 the question was posed did you favor or oppose those kinds
12 of suits, you said you favor them. Can you tell us just a
13 little bit more about that?

14 THE JUROR: Well, I mean, my feeling is that if
15 somebody even of authority makes a mistake or something like
16 that and it affects them, it should be rectified, that's how
17 I feel about that.

18 MS. HARRIS: You understand here as we come in
19 that there are two sides to every story and that there's
20 going to be a lot of evidence that you're going to have to
21 assess and weigh in order to make a decision, but you feel
22 you can do that fairly?

23 THE JUROR: Yes.

24 MS. HARRIS: I noticed also that you had indicated
25 that your son had had a car accident and there had been some

1 litigation perhaps --

2 THE JUROR: Yeah.

3 MS. HARRIS: -- that followed. Can you tell us a
4 little bit what that was about?

5 THE JUROR: Actually I wasn't involved in the
6 litigation, I was named in the lawsuit.

7 MS. HARRIS: Because it's your car?

8 THE JUROR: Because it's my car.

9 MS. HARRIS: Of course.

10 THE JUROR: Because he got in the car, somebody in
11 the other car got injured and they sued my name because it
12 was my car.

13 MS. HARRIS: You were not personally involved in
14 going to trial?

15 THE JUROR: It never went to trial, the insurance
16 company settled, but I know there was a lawsuit filed
17 because I have copies of it at home where my name was on
18 it.

19 MS. HARRIS: Anything else?

20 MR. ROACHE: I have nothing.

21 MR. CURRAN: Thank you, sir.

22 MS. SCAPICCHIO: Thank you.

23 THE COURT: Mr. Quigley, I'm going to ask you to
24 call this number tonight after 6:00 with your juror number,
25 and if you're selected for the final jury, we'll see you

1 tomorrow morning at nine. Thank you.

2 THE JUROR: Thank you.

3 MR. ROACHE: Thank you, sir.

4 MS. HARRIS: Thank you.

5 MS. SCAPICCHIO: Thank you.

6 THE COURT: Hi.

7 THE JUROR: Hi.

8 THE COURT: This is Mr. Gilbert?

9 THE JUROR: Right.

10 THE COURT: Ms. Harris.

11 MS. HARRIS: Good morning, sir, my name is
12 Mary Jo Harris. I and Hugh Curran represent Detective
13 Callahan. We're going to follow up with a few follow-up
14 questions. I understand you're a truck driver?

15 THE JUROR: Yes, I drive the mail around at night
16 from post office to post office.

17 MS. HARRIS: Okay. I think you had indicated in a
18 prior lifetime you had worked in a detention center in
19 Tampa, Florida?

20 THE JUROR: In Tampa, Florida, yes, ma'am.

21 MS. HARRIS: How long were you working there?

22 THE JUROR: About three years total.

23 MS. HARRIS: What was your job when you were down
24 there?

25 THE JUROR: I was a childcare worker.

1 MS. HARRIS: Okay. So, detention center, it
2 wasn't -- I guess I'm assuming from that that you're working
3 in the criminal justice system. Is my assumption incorrect?

4 THE JUROR: Well, it was just in a detention
5 center there in the boys dorm, you know, as a worker.

6 MS. HARRIS: I see, I see. Okay.

7 THE JUROR: Sometimes I would drive them to the
8 courthouse.

9 MS. HARRIS: Okay. Was there anything in that
10 experience that caused you to form an opinion, either
11 positive or negative, toward the criminal justice system or
12 law enforcement generally?

13 THE JUROR: No. No, there wasn't.

14 MS. HARRIS: Anything else?

15 MR. ROACHE: Just a brief question, Mr. Gilbert.
16 My name is John Roache, and I represent some of the
17 defendants in this case. You say you drive a truck at night
18 for the post office?

19 THE JUROR: Yes, sir.

20 MR. ROACHE: What hours do you drive?

21 THE JUROR: I drive from three in the morning to
22 ten in the morning.

23 MR. ROACHE: Okay. Three in the morning to ten in
24 the morning. Would your sitting on this jury have an impact
25 on your employment?

1 THE JUROR: Would it have an impact, I would not
2 be able to work that shift if I had to be here at nine.

3 MS. HARRIS: Would you be able to work?

4 THE JUROR: I would work different hours, work in
5 the afternoon.

6 MR. ROACHE: Okay. This case involves a suit
7 brought by a person who claims to be wrongfully convicted of
8 a homicide that occurred many years ago, and he's claiming
9 that certain evidence was withheld from his lawyer, he was
10 denied the right to a fair trial. Now, have you ever been
11 involved or ever heard of any type of similar lawsuits?

12 THE JUROR: No, sir, I only moved here to Boston
13 three years ago.

14 MR. ROACHE: Okay. Nothing while you were working
15 in Florida, any lawsuits brought against law enforcement for
16 alleged wrongdoings or inmates or detainees?

17 THE JUROR: No, not firsthand, no.

18 MR. ROACHE: Okay. That's all I have, thank
19 you.

20 THE COURT: Ms. Scapicchio.

21 MS. SCAPICCHIO: Good morning, my name is
22 Rosemary Scapicchio. Together with Mike Reilly, we
23 represent the plaintiff in this case, Shawn Drumgold. We
24 expect that the evidence is going to show -- is going to
25 demonstrate in this case that, well, the allegation is that

1 Detective Callahan withheld some information from the
2 prosecutors in this case that resulted in Shawn Drumgold
3 getting an unfair trial. We expect that you're going to
4 hear evidence from police witnesses as well as evidence from
5 civilian witnesses. Would you be able to evaluate the
6 evidence of both police witnesses and civilian witnesses the
7 same, or would the police get an edge at all?

8 THE JUROR: I believe it would be the same. I
9 could look at both sides.

10 MS. SCAPICCHIO: Okay. After you heard all the
11 evidence if you determined that Shawn Drumgold had proven
12 his case that evidence was withheld that resulted in him
13 getting an unfair trial, could you award money damages to
14 Shawn Drumgold?

15 THE JUROR: I believe so, yes.

16 MS. SCAPICCHIO: I don't have anything further.
17 Thank you very much.

18 THE COURT: Mr. Gilbert, here's a number for you
19 to call after 6:00.

20 THE JUROR: Today?

21 THE COURT: Today. This will tell you whether
22 you're on the final jury. There's one more round. You'll
23 use your juror information, the string of numbers that you
24 plug into when you call up, okay, and if you are selected,
25 we'll see you tomorrow morning at 9:00.

1 MS. HARRIS: Should we ask one question. I'm
2 assuming you'll be able to change your shift, if we sit from
3 9 to 1, are you sure that that won't interfere with your
4 work?

5 THE JUROR: No, it won't, I can work another shift
6 from three in the afternoon into the night and I get paid
7 for the rest for jury duty.

8 THE COURT: Federal Government, right?

9 THE JUROR: No, there's a contractor for the post
10 office.

11 THE COURT: Okay. Thank you, sir. Hi,
12 Mr. Pittenger.

13 THE JUROR: Hello.

14 MS. SCAPICCHIO: Good morning, my name is
15 Rosemary Scapicchio. Together with Mike Reilly, we
16 represent the plaintiff in this case, Shawn Drumgold. We
17 expect in this case that the evidence would suggest that
18 Detective Callahan in this case withheld some evidence from
19 the prosecutors that resulted in Shawn Drumgold not getting
20 a fair trial. We expect that you're going to hear evidence
21 from police witnesses as well as from civilian witnesses.
22 Would you be able to evaluate the evidence from the police
23 witnesses the same as the evidence from the civilian
24 witnesses or would the police witnesses get an edge at all?

25 THE JUROR: I think I'd be able to evaluate both

1 equally.

2 MS. SCAPICCHIO: Okay. Do you have any hesitation
3 about that?

4 THE JUROR: Well, I mean, a little bit, it's just
5 kind of being taught from an early age to kind of trust
6 police. Obviously I've kind of -- that's kind of evolved
7 over the years. It's gone a little bit beyond that where
8 I'm inclined to believe the civilian witnesses in a lot of
9 cases after hearing so much about in the news about the
10 police maybe not always giving people a fair shake. I think
11 I'd be more open to the civilian point of view than I have
12 had in the past.

13 MS. SCAPICCHIO: When you say more edge, would the
14 police officer get an edge or would a civilian get an edge?

15 THE JUROR: I think at this point no one would get
16 an edge.

17 MS. SCAPICCHIO: No one would get an edge?

18 THE JUROR: Correct.

19 MS. SCAPICCHIO: I also noticed on your
20 questionnaire that you indicated you had a family friend
21 that was a warden in a county jail?

22 THE JUROR: Yes.

23 MS. SCAPICCHIO: Which county jail would that have
24 been?

25 THE JUROR: He was at Cedar Junction.

1 MS. SCAPICCHIO: Would the fact that you had a
2 friend at Cedar Junction enter into your considerations
3 here?

4 THE JUROR: No.

5 MS. SCAPICCHIO: I don't have any further
6 questions.

7 MS. HARRIS: My name is Mary Jo Harris. I
8 represent Detective Callahan. I think I noticed from your
9 questionnaire you've just started a job?

10 THE JUROR: Yes.

11 MS. HARRIS: Would sitting on this jury interfere
12 with your employment in any way?

13 THE JUROR: I don't think it would interfere, but
14 the one thing I would be a little concerned, I mean, I
15 realize it's, you know, it's jury duty, I can't help it, but
16 I kind of think that it would be important for me to show my
17 face around the office more, but I don't think it would
18 actually affect my job.

19 MS. HARRIS: And when did you start working?

20 THE JUROR: I started working last Thursday.

21 MS. HARRIS: I'll defer to your Honor on that.

22 THE COURT: It's up to Mr. Pittenger, if you think
23 you can manage this, we won't sitting on Fridays, and
24 they'll be a chunk of time in a week that we won't be
25 sitting, the week of the 21st, so if you think that that's

1 enough to keep you from your job.

2 THE JUROR: No, I don't think it's a matter like
3 risking losing the job, by any means, I just, I think that I
4 would ideally in a perfect world, I'd prefer to be able to
5 show my face eight, nine hours a day, but, I mean, it's
6 federal jury duty, I think the excuses don't get much more
7 legitimate than that.

8 THE COURT: I agree. Go on.

9 MS. HARRIS: I also noticed that you indicated you
10 had an alcohol charge?

11 THE JUROR: Yes.

12 MS. HARRIS: And you felt that the police had
13 singled you out. Can you tell us a little bit more, about
14 your feelings, about the feelings about singled out?

15 THE JUROR: Well, it was at a beach, appeared on
16 the 4th of July weekend when I was 19, and it just seemed
17 like there was a sea of kids my age drinking, and I was the
18 only one that was arrested out of my immediate group. Well,
19 the kids had open containers all around me, and I could not
20 understand why I had been specifically singled out.
21 Fortunately I was put in a first-time offenders type program
22 where I attended counseling and so forth, so it ended up
23 really not ending up as a conviction, per se.

24 MS. HARRIS: Did it leave you questioning the
25 fairness of the police you dealt with? It sounds having

1 felt that you were singled out, how did that impact the way
2 that you were looking at the officers that you dealt with?

3 THE JUROR: Well, that incident specifically
4 certainly kind of made me realize how human they are, kind
5 of open to bias, open to judgment calls that might not
6 always go your way, but the fact that they're kind of not
7 machines, you know, that they have biases just like anyone
8 else.

9 MS. HARRIS: The case that we're going to be
10 presenting here has a pretty stark dispute of factors, if
11 you will, there are civilians who say one thing happened,
12 and there's obviously a defense that says something else
13 entirely went on, and you're going to be evaluating the
14 testimony of police officers and civilians. Some of the
15 testimony is going to be based on things that happened over
16 20 years ago. Are you going to be able to listen to that
17 evidence and give fair credibility to everybody who's
18 testifying in front of you?

19 THE JUROR: Yes, I think so.

20 MS. HARRIS: Guys.

21 MR. ROACHE: A couple questions, Mr. Pittenger.
22 In what municipality were you arrested for drinking the open
23 container?

24 THE JUROR: That was in Scituate.

25 MR. ROACHE: Scituate?

1 THE JUROR: Humarock.

2 MR. ROACHE: Have you ever had any interactions
3 with the Boston Police?

4 THE JUROR: Nothing beyond like, you know, get out
5 of the street, things like that, things of that nature,
6 nothing beyond that though.

7 MR. ROACHE: Have you read or heard anything about
8 any cases involving the Boston Police in which the police
9 were put in a negative light?

10 THE JUROR: None really come to mind offhand.

11 MR. ROACHE: Okay. Now, in this particular case,
12 you're going to hear testimony that the police singled out
13 an individual, Mr. Drumgold, as a perpetrator of a homicide
14 despite evidence to the contrary, and they focused on him
15 and him alone along with another individual. Would your
16 prior experience having been singled out for drinking
17 whereas there were many other people drinking at the same
18 time, would that have an impact on your ability to assess
19 the credibility of the witnesses and the weight of the
20 evidence?

21 MS. SCAPICCHIO: I think I would object to that
22 question, your Honor.

23 THE COURT: I don't think so. Go on. You can
24 have the question.

25 THE JUROR: I feel that I would kind of have those

1 feelings regardless of whether or not I had been arrested
2 being able to empathize with someone who had been singled
3 out in a situation like that, I kind of felt like that
4 incident specifically wouldn't affect my judgment.

5 MR. ROACHE: Your incident of being singled out
6 for drinking?

7 THE JUROR: Right.

8 MR. ROACHE: But you think if you heard evidence
9 that the police were singling out an individual for a
10 homicide that that would have an impact on your decision?

11 THE JUROR: I'm sorry, could you repeat that?

12 MR. ROACHE: Would the fact that you're going to
13 hear evidence that the police were singling out an
14 individual who proclaimed his innocence as the person who
15 committed a homicide and despite other evidence to the
16 contrary about perhaps other perpetrators that could have
17 committed the homicide, would that affect your decision to
18 be able to fairly evaluate the evidence and come to a
19 decision based on the evidence alone, or would you have some
20 bias either for or against the person who was singled out or
21 for or against the police officers that were alleged to have
22 singled this person out?

23 THE JUROR: I guess it might affect somewhat
24 honestly. I know this is sort of going back on what I just
25 said, but when it's phrased like that, I guess I could see

1 that my experience affecting that kind of being, you know,
2 being more inclined to believe someone who said they had
3 been singled out because I realize that it can happen in
4 cases minor as mine or in serious cases as a homicide.

5 MS. SCAPICCHIO: Can I follow up, your Honor?

6 THE COURT: Yes, you can.

7 MS. SCAPICCHIO: So, in this case, if guilt or
8 innocence wasn't an issue and the only issue was whether or
9 not Shawn Drumgold got a fair trial and whether or not a
10 police officer withheld evidence that may have resulted in
11 an unfair trial, whether he was singled out or not singled
12 out, the evidence in this case is about evidence that
13 withheld and whether or not it resulted in an unfair
14 trial.

15 THE JUROR: Okay.

16 MS. SCAPICCHIO: Under those circumstances, could
17 you evaluate the evidence of a police officer and the
18 evidence of a civilian witness the same way you would
19 everyone else, listen to the evidence and make the
20 conclusions after you heard the person testify?

21 THE JUROR: Yes, I feel so.

22 THE COURT: Any further questions?

23 MS. SCAPICCHIO: No, your Honor.

24 THE COURT: I'm going to give you a number to call
25 after 6:00 today. Okay. It will tell you whether you're on

1 the final jury, sir, and you need your juror number when you
2 call in after 6:00.

3 THE JUROR: Also, I just witness stand to mention
4 somebody, one of the gentleman the name of his firm,
5 Bletzer & Bletzer, Conrad Bletzer is a family friend.

6 MR. CURRAN: Medfield.

7 THE JUROR: He lives up a block. I don't think --

8 THE COURT: He's on the witness list?

9 MR. CURRAN: No, Judge, he's my law partner.

10 THE COURT: I see.

11 MR. CURRAN: How long have you known the Bletzer
12 family?

13 THE JUROR: As long as I can remember.

14 THE COURT: So then the question is do you think
15 that if you were a juror in this case and you voted against
16 Mr. Curran, the position Mr. Curran was taking, would it be
17 hard for you to go home and run into your friend down the
18 block?

19 THE JUROR: I don't think so.

20 THE COURT: Can you step out for just a second, I
21 want to talk to the lawyers about this. Your feelings,
22 Mr. Curran?

23 MR. CURRAN: Both Bletzers, they're both pretty
24 active in Medfield. I look at the age. I know that
25 Conrad's son just graduated from Bentley, and he played

1 hockey, so he spent an extra year before he went to college,
2 and they're about the same age.

3 THE COURT: So?

4 MR. CURRAN: To me, before Mr. Roache asked some
5 questions, I liked him as a juror, but I understand the
6 Court, you know, the concern. I know that both Bletzers,
7 Conrad and Kurt live in Medfield. If he's in that
8 neighborhood, they're both pretty close to him.

9 THE COURT: Ms. Scapicchio.

10 MS. SCAPICCHIO: Judge, I'm concerned he felt like
11 he needed to bring it to our attention. I liked him as a
12 juror, but I would be concerned. I'm having the same
13 concerns Mr. Curran has.

14 THE COURT: Okay, we'll excuse him. Tell him he's
15 excused. Hi. Mr. Lombardo, Ms. Scapicchio you start.

16 MS. SCAPICCHIO: Hi, Mr. Lombardo, my name is
17 Rosemary Scapicchio. We're going to ask you a few more
18 questions regarding the questionnaire you've already filled
19 out. I noticed on your questionnaire that you were asked a
20 question, people who have been wrongfully convicted
21 sometimes bring lawsuits against the police department, do
22 you favor or oppose these type of lawsuits, you indicated
23 you opposed them. Could you tell me why?

24 THE JUROR: Just because if it's not the officer's
25 fault to begin with that the person was wrongfully accused.

1 It doesn't make it -- I think it shouldn't go against that
2 officer.

3 MS. SCAPICCHIO: Okay. What would make you say if
4 it's not, why would you have the position if it's not the
5 officer's fault?

6 THE JUROR: The circumstances just on the basis
7 that it was that wrongfully accused in the first place or
8 things of that nature.

9 MS. SCAPICCHIO: Okay. And so is there any
10 circumstance where you think a plaintiff is entitled to sue
11 a police officer if he didn't have a fair trial, or are
12 there no circumstances where you think that's appropriate?

13 THE JUROR: No, there probably is some.

14 MS. SCAPICCHIO: But you don't think that you
15 don't favor those types of lawsuits and you don't believe
16 they should be brought?

17 THE JUROR: Not necessarily, no. Certain
18 circumstances that, you know, it would have to all be
19 explained.

20 MS. SCAPICCHIO: What would be those circumstances
21 that you think it would be okay, a lawsuit for a wrongful
22 conviction?

23 THE JUROR: I'm not really certain at this
24 point.

25 MS. SCAPICCHIO: You can't think of any occasions

1 on which it would be okay to bring a wrongful conviction
2 suit?

3 THE JUROR: No, not offhand, no.

4 THE COURT: Is it that you just can't think of
5 one?

6 THE JUROR: Correct.

7 THE COURT: You don't think there is a situation
8 out there?

9 THE JUROR: Oh, no, I imagine there definitely is.
10 I just can't think of one right off the top of my head.

11 THE COURT: Go on, Ms. Scapicchio.

12 MS. SCAPICCHIO: In this case, Detective Callahan
13 withheld some evidence from the prosecutors that resulted in
14 Shawn Drumgold not getting a fair trial. You're going to be
15 asked to evaluate the testimony of police officers vs. the
16 testimony of civilian witnesses. Would the police officers
17 get an edge at all?

18 THE JUROR: I don't think so.

19 MS. SCAPICCHIO: Why not?

20 THE JUROR: In today's day and age, things that
21 have happened in the past, just there's always that doubt.

22 MS. SCAPICCHIO: What things are you talking about
23 that happened in the past?

24 THE JUROR: Just different stuff you see in the
25 local news, and, you know, things that have gotten by other

1 people because they were officers and --

2 MS. SCAPICCHIO: Like what, can you give me an
3 example?

4 THE JUROR: Just basic stuff. You see people
5 getting pulled over for a DUI, which is on there, and
6 different people with a badge have gotten let off with
7 lesser penalties than somebody like myself would have.

8 MS. SCAPICCHIO: Okay. So, is it your position
9 that the police officers would get the same treatment as the
10 civilian witnesses, you would listen to the testimony and
11 come to a conclusion after you heard the evidence?

12 THE JUROR: Correct, all based on evidence, not
13 who they are or what they do.

14 MS. SCAPICCHIO: Thank you.

15 MS. HARRIS: Good morning, sir. My name is
16 Mary Jo Harris, and I and Hugh Curran represent
17 Detective Callahan. Just to follow up on a couple of
18 questions, Ms. Scapicchio, like here there are two very
19 different stories about what happened.

20 THE JUROR: Correct.

21 MS. HARRIS: Is it your testimony that you would
22 listen to both sides and you would be able to find against a
23 police officer if you felt it was proven that he had done
24 something wrong?

25 THE JUROR: Correct.

1 MS. HARRIS: You are also open to the possibility
2 that there could be a wrongful conviction?

3 THE JUROR: That's right, need to hear all that
4 evidence.

5 MS. HARRIS: You had referenced your own
6 experience being charged with a DUI. Does that impact your
7 ability, you know, credit or to listen to a police officer
8 and give him the same kind of credibility, or that's a bad
9 question to --

10 THE JUROR: I know what you're saying.

11 THE COURT: Good, because I don't.

12 THE JUROR: No, because that was my own doing,
13 that was my choice to get behind the wheel. I got caught.

14 MS. HARRIS: Did you feel that you were treated
15 unfairly in that circumstance?

16 THE JUROR: No. There was actually three.

17 MS. HARRIS: I'm sorry.

18 THE JUROR: Three different ones.

19 MS. HARRIS: I'm not trying to pry into your
20 personal business.

21 THE JUROR: No, it's not.

22 MS. HARRIS: Do you guys want to follow up
23 anything?

24 MR. ROACHE: You said that there were three prior
25 OUIs, without getting into the details?

1 THE JUROR: Correct.

2 MR. ROACHE: Do any of them involve the Boston
3 Police?

4 THE JUROR: None.

5 MR. ROACHE: Nope. In any of the three times that
6 you were stopped for OUI, did you feel you were being
7 treated unfairly by the police?

8 THE JUROR: No, I did not.

9 MR. ROACHE: Did you feel that because you were a
10 civilian and not a police that you were treated unfairly?

11 THE JUROR: No.

12 MR. ROACHE: Do you think if you were a police
13 officer you would have received better treatment from a
14 fellow police officer?

15 THE JUROR: It's hard to say not being a police
16 officer.

17 MR. ROACHE: Now, you said you thought, if I
18 understood you correctly, you thought that police officers
19 sometimes get off more easily than civilians when they do
20 something wrong?

21 THE JUROR: Correct. That's just the stuff in the
22 newspaper or you hear on the news, those are the only ones
23 that I know of, things that of that nature.

24 MR. ROACHE: Would that -- your having heard that
25 or read that, would that affect your ability to assess the

1 credibility of a police officer or a law enforcement officer
2 that will testify in this case as opposed to a civilian who
3 will testify in this case?

4 THE JUROR: None whatsoever. It's all based on
5 what is heard in the courtroom as far as I'm concerned.

6 MR. ROACHE: Okay. That's all I have, thank you,
7 sir.

8 THE COURT: I'm giving you a number to call after
9 6:00, call this number with your juror number and then you
10 find out with calling this 1-800 number, and if you are,
11 we'll see you tomorrow at nine. Thanks a lot, sir.

12 MS. SCAPICCHIO: Thank you.

13 THE JUROR: Hello.

14 THE COURT: Hi. This is Ms. Riyo.

15 THE JUROR: Ms. Riyo, you got it right.

16 MS. HARRIS: It's me, good morning. How are you?

17 THE JUROR: Good.

18 MS. HARRIS: I'm Mary Jo Harris, and Hugh Curran
19 and I represent Detective Tim Callahan in this case, and as
20 you probably remember, this is a case where the plaintiff
21 alleges he was wrongfully convicted. We represent the
22 defendant who denies that he did anything that led to a
23 wrongful conviction. That's basically the dispute. I
24 noticed in going through your questionnaire you indicated
25 that at some point in the past you felt that your father was

1 mistreated by the police?

2 THE JUROR: Uh-hum.

3 MS. HARRIS: Could you tell us just a little bit
4 about that?

5 THE JUROR: Well, I was not there, but, of course,
6 my father, and he was never convicted or had any criminal
7 records, and he was collecting the rent. It was already two
8 months. I was getting married, couldn't help with the
9 mortgage that was behind. I said, dad, you know, you might
10 want to go and talk to the tenant and say, you know, you
11 need to pay it at one point.

12 He went, he was talking to the mother, pointing
13 out things saying we fixed this, we fixed that, and so the
14 tenant called the police, and then the police came and my
15 father was talking to this lady, he was talking with his
16 hands. They didn't say anything to him. He got pushed, he
17 didn't know what was going on and was being arrested.

18 My family came and my nephew saw that. My sister
19 is also a social worker. She was telling the State Police
20 who obviously spoke Spanish said you need to talk to my
21 father in Spanish, he doesn't understand what's going on,
22 please, you know, indicate what's going on, she didn't, and
23 he was arrested, and we bailed him out. It was not a
24 pleasant moment. He did what he was supposed to do, and it
25 just, you know, it's all in the past.

1 MS. HARRIS: How long ago did this happen?

2 THE JUROR: This was in '07.

3 MS. HARRIS: Where did it happen?

4 THE JUROR: In my house.

5 MS. HARRIS: I mean which town?

6 THE JUROR: Lawrence.

7 MS. HARRIS: And the police officer was a female
8 police officer?

9 THE JUROR: There was a male officer and a female
10 officer. The female officer spoke Spanish.

11 MS. HARRIS: Having had that experience, has that
12 impacted the way you view police officers?

13 THE JUROR: No, because I work with police
14 officers, I work with the court. The only thing is that,
15 you know, it is unfortunate that, you know, it was presented
16 the way it was presented and handled the way it was handled,
17 so of course it was my father, it didn't hurt me, but it
18 just happened that he was one of the unfortunate ones.

19 MS. HARRIS: When you say that you work with the
20 court, what court do you work with?

21 THE JUROR: I work with the Lawrence court or any
22 court that we happen to have a case on, could be Boston, but
23 mainly Lawrence court, juvenile court.

24 MS. HARRIS: You work with a social worker?

25 THE JUROR: With the Department of Children and

1 Families.

2 MS. HARRIS: Have you had any experiences with the
3 Boston Police Department either professionally or in your
4 personal life?

5 THE JUROR: No.

6 MS. HARRIS: In this case there are going to be
7 different versions of events testified to, and there's going
8 to be civilian witnesses as well as police officer
9 witnesses, and there may be lawyer witnesses as well. Would
10 any of those types of witnesses be entitled to more credence
11 or less credence by you based on their profession?

12 THE JUROR: With what, I'm sorry?

13 MS. HARRIS: Would you be more likely to credit
14 the testimony of a police officer or a lawyer over a
15 civilian witness?

16 THE JUROR: I think, you know, whatever evidence
17 they have, you know, we go by, I will go by that. I don't
18 think that I will, you know, favor a police officer or a
19 lawyer, it's what's presented, and you know what seems
20 logical and fair.

21 MS. HARRIS: What kind of work or what kind of
22 cases are you involved with? Do you actually go to court
23 with any of your clients?

24 THE JUROR: Yes. Most of my cases are COP cases
25 where the department has custody, and these kids are in

1 placement, but a lot of them we have CHINS custody for, you
2 know, kids who are in need of services and juveniles, and,
3 you know, we're often in court because they're in violation
4 of their probation and constantly building a plan to make
5 sure that they're stable and we can meet their needs.

6 MS. HARRIS: Has anything in your work led you to
7 question the ability or the competence of any of the law
8 enforcement officers that you've dealt with in the course of
9 your work?

10 THE JUROR: No, I think from the work that we do,
11 I do and the relationship that my department has with the
12 Lawrence District Court, I think we actually have two judges
13 that we work with, and they're really good and on point. We
14 have a good relationship, and, of course, I have the support
15 of my coworkers and never really had a problem.

16 MS. HARRIS: Okay.

17 MR. ROACHE: Hi, Ms. Riyo, my name is John Roache,
18 and I represent a couple of the defendants in this case.
19 First of all, I noticed on your questionnaire question
20 No. 30 that you are concerned with your job if you were to
21 serve as a juror. What concerns do you have with your job?

22 THE JUROR: Well, I didn't want to say anything
23 yesterday because I felt like, you know --

24 THE COURT: I guilt tripped you is what you're
25 saying.

1 THE JUROR: I think you did, but honestly I think
2 this is a wonderful experience and I feel honored to be
3 here, but, you know, as you probably guys know social
4 workers, I have 17 cases, 17 families to work with, and it's
5 not your typical family, it's families that usually have
6 issues and problems that we need to address and kids that we
7 work with, and I usually have weekly supervised visits with
8 a family of four children under the age of four which I had
9 to cancel today. We're five unit members, and my team
10 couldn't do the visits, so, you know, that's going to hurt
11 me, and we actually lost a client yesterday, and I cannot be
12 there to support my coworkers.

13 THE COURT: Lost a client how?

14 THE JUROR: Well, the child died, so we came back
15 from the -- so, these are typical things that happen. I
16 have to be constantly on the phone doing referrals,
17 planning. I have two court cases coming up next week.

18 THE COURT: At what time, in the morning?

19 THE JUROR: Yeah, mornings.

20 THE COURT: There's obviously no way you could do
21 that and be a juror in this case. If you think that your
22 responsibilities on the job will make it impossible.

23 THE JUROR: Well, I also wrote a statement, and I
24 called and I was on call for three weeks, and I wrote the
25 statement and I called the lady and I said, you know, being

1 on call for three weeks is also crazy because you don't
2 know, it's unpredictable. She said, well, it's not an
3 excuse, so I'll give you a one day and yesterday was my day
4 and I got to be chosen.

5 THE COURT: What do you mean, when you talked to
6 your employer?

7 THE JUROR: No, when I called.

8 THE COURT: When you called here?

9 THE JUROR: When I called to register, the lady
10 said we received the excuse, however that's not enough, so
11 instead of three week on call, they gave me one day which
12 was yesterday.

13 THE COURT: I see. You know what I'm going to
14 excuse you. I'm sorry that we had to put you through this.
15 It does seem to me that you have obligations that would be
16 undermined by this. Thank you very much.

17 THE JUROR: Thank you, good luck.

18 THE COURT: Business owners, CEO.

19 MR. ROACHE: Why don't we ask that first.

20 THE COURT: Yes, please, I'll do that. Hi.

21 THE JUROR: Hi.

22 THE COURT: You are Ms. Shea?

23 THE JUROR: Uh-hum.

24 THE COURT: Let me start you have conferences and
25 presentations scheduled for the start of October?

1 THE JUROR: Yes.

2 THE COURT: You understand that there is a chance,
3 there's a chance that it would end earlier but there's a
4 chance that you would be on until October 15th, 9 to 1.
5 What's the impact of that on your job?

6 THE JUROR: So I own my own business.

7 THE COURT: Yes.

8 THE JUROR: I've put in nonrefundable deposits for
9 these conferences to exhibit.

10 THE COURT: Where are they?

11 THE JUROR: They're all over in Massachusetts, one
12 in Worcester, one in Springfield, one in. --

13 THE COURT: So these are nonrefundable?

14 THE JUROR: Yes, so it would be about \$1,000,
15 \$1500, somewhere in there.

16 THE COURT: I'll excuse you. Thank you. Debra
17 Slade is next. We have to go back into the courtroom.
18 Let's take a brief break. 15 minutes. We'll start again at
19 11.

20 (A recess was taken.)

21 THE CLERK: All rise. United States District
22 Court is now in session.

23 THE COURT: Good morning, everyone. You can be
24 seated. My name is Judge Gertner, and I'm the Judge of this
25 session. What we're doing this is picking a jury in the

1 case of Shawn Drumgold vs. Callahan, City of Boston,
2 Callahan and the City of Boston. The goal of the jury
3 selection, just so that you know, is to pick a jury that
4 would be the kind of jury that you'd want to have if you
5 were sitting in the shoes of either side.

6 That's when you think about it, who do you want to
7 sit on a case that you would have in a comparable situation
8 to the people in this case? So, we take a little bit of
9 time, and that means I address you all as a group and ask
10 some questions of you as a group, and then we question
11 people individually. We've done a lot of questioning
12 yesterday, so this won't take very long. I anticipate we'll
13 be finished by early afternoon and people won't have to hang
14 around much more than that. You understand it takes more
15 than a quick questioning to find the fairest jurors we know
16 how to find.

17 I'm going to ask a couple questions. I'm going to
18 give you some idea what the case is and ask whether or not
19 whether you've read, seen or heard anything about the case.
20 When I give you the description of the case, I want you to
21 listen carefully, then I'm going to read a long list of
22 witnesses to you. The lawyers were told to give us the name
23 of anyone that they might conceivably call, so their
24 imaginations were very fertile, so we have a very, very long
25 list, but I assure this will not be the list of actually

1 people who will be called.

2 We want to make sure that no one goes on the stand
3 that you're related to, so we ask them to clear a bunch of
4 names, then we'll introduce you to the parties. Would you
5 stand, please, and you can be sworn in as potential jurors.

6 (Potential jurors were sworn)

7 THE COURT: You can be seated. So let me first
8 give you a description of the case. It's a little long.
9 This is a case that's brought under the federal civil rights
10 statute in which the plaintiff, Shawn Drumgold, claims that
11 the defendant, Timothy Callahan, City of Boston and Officer
12 Superintendent Roache violated his right to a fair trial by
13 knowingly withholding exculpatory evidence relating to a
14 witness who testified in his criminal prosecution. The
15 criminal prosecution was in 1989.

16 Mr. Daley claims that he was convicted as a result
17 of Mr. Callahan's violation of his civil rights, that the
18 violation of his civil rights was a substantial factor
19 rather in causing his conviction. The burden of proof is on
20 the plaintiff, Mr. Drumgold, to prove elements of his claim
21 to you by a preponderance of the evidence.

22 You'll get more detailed instructions from me at
23 the end of the case, I just want to give you an overview to
24 see if any of you have heard of the case. The case arises
25 out of the August, 1988 murder of a young girl named

1 Tiffany Moore. She was shot while she was sitting on a
2 mailbox surrounded by a group of teenagers near the corner
3 of Humboldt Avenue and Homestead Street in Roxbury.

4 Shawn Drumgold and Terrance Taylor were ultimately
5 arrested and charged with the crime, but Mr. Drumgold claims
6 that exculpatory evidence pertaining to a witness that was
7 called at trial, a witness named Ricky Evans, was knowingly
8 withheld from the prosecution. Detective Callahan denies
9 this. Mr. Drumgold further claims that the knowing
10 suppression of that penal exculpatory evidence by Detective
11 Callahan violated his rights to due process and resulted in
12 a conviction that led to an unfair and untrustworthy guilty
13 verdict. Detective Callahan denies that any of his actions
14 deprived Mr. Callahan of a fair trial.

15 Have any of you read, seen or heard anything about
16 this case? Let me write down, you have to stand, I'm just
17 going to get your numbers, and then we'll talk to you again.
18 Can you tell me who you are, Ms. Bresnahan?

19 THE JUROR: Bresnahan, yes.

20 THE COURT: Juror No. 45. It's a little hard for
21 me to figure this out. I'm sorry, can you tell me your
22 name?

23 THE JUROR: Patricia Antosca.

24 THE COURT: Mr. Keck?

25 THE JUROR: Yes.

1 THE COURT: Juror No. 54, and Mr. Spoerl, juror
2 No. 56, and you are Ms. --

3 THE JUROR: -- Desmery.

4 THE COURT: Just one second.

5 THE CLERK: Last name.

6 THE JUROR: Desmery.

7 THE CLERK: She's 66.

8 THE COURT: Ms. Desmery, okay. You are?

9 THE JUROR: Mr. Pitman.

10 THE CLERK: 68.

11 THE COURT: I don't have those numbers, Maryellen.

12 THE CLERK: Second page.

13 THE COURT: I don't have a second page.

14 Mr. Pitman did you say?

15 THE JUROR: Yes.

16 THE COURT: You can sit down when I call your
17 name. Anyone in the remaining rows. All right. We'll
18 question you again at the sidebar in a moment. I'm going to
19 read a list. First let me have the lawyers and the parties
20 introduce themselves to you.

21 MS. SCAPICCHIO: Thank you, your Honor. Good
22 morning, ladies and gentlemen, my name is
23 Rosemary Scapicchio. I have a law office here in Boston,
24 and I together with Attorney Mike Reilly and Amy Coggan,
25 who's a third law student at Suffolk University, are

1 representing Shawn Drumgold, this is the plaintiff.

2 THE COURT: Okay.

3 MS. HARRIS: Good morning, ladies and gentlemen.
4 My name is Mary Jo Harris, and I also practice in town. I
5 represent retired Detective Timothy Callahan along with my
6 colleagues who will introduce themselves. Thank you.

7 MR. CURRAN: Good morning, ladies and gentlemen,
8 my name is Hugh Curran. I'm an attorney in Boston at the
9 law firm of Bletzer & Bletzer. I also represent
10 Timothy Callahan.

11 MR. ROACHE: Good morning, ladies and gentlemen,
12 my name is John Roache, and I like the other lawyers have a
13 law firm in Boston. I represent the City of Boston and
14 former Police Commissioner Francis M. Roache who may or may
15 not be defendants in this case.

16 THE COURT: Are any of you familiar with the
17 lawyers or the parties in this case? Personal relationship,
18 family relationship? Okay. There are no affirmative
19 responses. This trial, it's possible that this trial will
20 last until October 15th. That was put in the questionnaire,
21 but we sit from 9 to 1, so you typically have your
22 afternoons off except at a time when the jury begins
23 deliberating, then you deliberate for as long as it takes.

24 In addition the week of the 21st, which is the
25 week after next, because of my schedule, we can't have

1 trial. We typically don't sit on Fridays, so the
2 obligations in this case will be essentially four days a
3 week, obligations for all the days except for that week, and
4 also the Monday, the 28th, which is a Jewish Holiday. It is
5 conceivable that the case could go to October 15th. It
6 could conceivably end earlier than that, but we want to make
7 sure we've cleared all that amount of time. All of you have
8 said on your questionnaire that you can serve through that
9 period of time.

10 If there is any one among you, let me preface
11 that, we need everyone to sit as jurors, you know that.
12 It's not fun for everyone to take time off in busy lives,
13 but the system works only when as many people from all parts
14 of our area sit, so with that really fabulous guilt trip, is
15 there anyone who absolutely can't serve during this period
16 of time? Again, Mr. Pitman, okay. Is there anyone else who
17 can't serve? Tell me your name.

18 THE JUROR: Kathleen Sullivan.

19 THE COURT: Okay. And tell me your name, Mr. --

20 THE JUROR: Caballera.

21 THE COURT: Mr. Caballera is juror 50, and
22 Mr. Lomba is 51. Okay. I'm going to read -- I'm just
23 taking all this down, I'll question you again. I'm going to
24 read a list of witnesses to you, again, witnesses that may
25 conceivably be involved in the case. It's a long list, so

1 listen carefully, and if there's anyone on that list you
2 know, related to, you know, good buddies with, raise your
3 hand afterwards.

4 First I'm going to read the names of people from
5 Boston, and they are Eric Johnson, Corinne Delahunt,
6 Stanley Kessler, Mary Alexander, Ricky Evans, Wayne Davis,
7 Ronald Downs, David Carte, Vincent DiFazio, Theron Davis,
8 Andrew Garvey, Romero Holliday, Robert Hayden, Mervin Reese,
9 Rana Roisten, Alice Moore, Cherry Walker,
10 Vantrell McPherson, Tracie Peaks, Chris Cousins, Kevin
11 Lucas, Thomas Gaughan, Lisa Holmes, that's Gaughan,
12 G-a-u-g-h-a-n, Lisa Holmes, Larry Ellison, Willie Simms,
13 Donald Wilson, Troy Jenkins, Geraldo O'Rourke, Terrance
14 Taylor, Paul Murphy, Tanoi Curry, Shamia Clemons, Travis
15 Goss, Eric Johnson, Stanley Bogdon, Diane Gill, Jose'
16 Garcia, Daniel Linsky, Tyronne Brewer, Rodney Sadberry,
17 Joseph Saia, William Celester, Paul Durand, Richard Walsh,
18 Paul Linn, Rosemary McLaughlin, Marlon Passley, Lewis
19 Santos, Robert George, Tony Smith, Francis Roache, Angel
20 Toro, Charles Horseley, David Meier, Edward McNelly, Neil
21 Miller, Darnell Johnson, Ralph Martin, Tracy Lyons, Cheryl
22 Cormier, Miller Thomas, Joseph Dunford, Joseph Saia, Marie
23 Donohue, Robert Dunford, Gary Eblan, Mark Hayes,
24 Kenneth Fong, Robert Francis, William Hussy, James Jordan,
25 Paul Leary, Jennifer Maconochie, William McCarthy. These

1 names might be repetitive, Timothy Murray, Peter O'Malley,
2 Terrence O'Neil, Kathleen O'Toole, Lalita Pulavarti,
3 Pervis Ryan, Michael Stratton, Justina Ward Justina Ward,
4 Robert Ahearn, Lorraine Henshaw, Robin DeMarco, Kevin
5 Averill, Joseph Carter, Michael Connolly, Robert Cunningham,
6 Donald Devine, Daniel Dovidio, Thomas Dowd, Paul Farrahar,
7 Robert Foilb, Gregory Gallagher, Michael Galvin, Darrin
8 Greeley, James Hasson, Bobbie Johnson, John Kelly, John
9 Kervin, Thomas Lee, Donald Levine, John McCarthy, Robert
10 Orr, Bridgett Robinson, Roger Spring, Albert Terestre, James
11 Wood, Joseph Zinck, Paul Joyce, Ralph Cinquegrana, Melvin
12 Tucker.

13 Now, from other towns, Stanley Bodgon from
14 Belmont; Mark DeLuca from Marshfield, I believe I already
15 mentioned Joseph Saia, who's Norwood; Paul McDonough,
16 Quincy; Philip O'Shane, Marblehead; Laura Scherz from
17 Arizona; Paul Connolly from Winthrop; Scott Keller, North
18 Andover; John Stanley, Milton; Steven Rappaport, Lowell;
19 John Daley, Marshfield; John Canavan from Plymouth, Thomas
20 Miller from Canton; Peter O'Malley from Charlestown;
21 Herbert Spellman, Kingston; James Hussy from Norwell.
22 Again, these are repetitious. Okay. Anyone familiar with
23 any of the names on that list? Please stand. Tell me your
24 name again, I'm sorry.

25 THE JUROR: Patricia Antosca.

1 THE COURT: Your number is.

2 THE CLERK: 52.

3 THE COURT: Okay. Counsel at sidebar.

4 (Sidebar conference was held as follows:)

5 THE COURT: Juror No. 45, of course, which is
6 Ms. Bresnahan. Ms. Bresnahan, Ms. Antosco, Mr. Keck and
7 Mr. Spoerl, please come forward.

8 THE COURT: Hi, Ms. Bresnahan.

9 THE COURT: Yes. If the others can please wait so
10 this conversation is confidential. You absolutely
11 positively can't serve?

12 THE JUROR: Oh, no, I didn't --

13 THE COURT: You heard about the case?

14 THE JUROR: Yes.

15 THE COURT: You heard about the case?

16 THE JUROR: I just remember the name Ricky Evans,
17 the name, and I remember some details but not a lot. I read
18 the paper constantly.

19 THE COURT: Anything that comes to mind?

20 THE JUROR: I sort of when you said the
21 Tiffany Moore, I remembered that. I used to work for
22 programs in the City of Boston and I just sort of remember,
23 not a lot though. It rang a bell.

24 THE COURT: We'll question you again on this in
25 the lobby, so try to remember what you remember, but

1 standing there now is there anything, any reason why you
2 don't think you could serve because of your memory of these
3 cases?

4 THE JUROR: No.

5 THE COURT: Okay. Thank you.

6 THE JUROR: I can go sit back?

7 THE COURT: You can go sit back. Ms. Antosca,
8 Patricia Antosca.

9 MS. SCAPICCHIO: What number is Ms. Antosca?

10 THE COURT: 52. Hi.

11 THE JUROR: Good morning.

12 THE COURT: You remember something about this
13 case?

14 THE JUROR: Only what I read in newspapers.

15 THE COURT: Right. What do you remember?

16 THE JUROR: Just, you know, reading different
17 articles in the newspaper at different times, nothing
18 specific.

19 THE COURT: There's nothing that comes to mind
20 right now?

21 THE JUROR: Only the effects of the case, I
22 remember the incident where a little girl was shot and the
23 mailbox, that whole thing.

24 THE COURT: This case is not about that.

25 THE JUROR: Okay.

1 THE COURT: That was the reason for the conviction.
2 This case is a challenge to a claim that there was
3 essentially allegation of the conviction. Did you read
4 anything about those?

5 THE JUROR: Not specifically.

6 THE COURT: We'll ask you about this again, but is
7 there anything sitting now, you know, standing there now
8 that makes you think you couldn't be a fair juror?

9 THE JUROR: Well, a couple of names I
10 recognized.

11 THE COURT: What were the names you recognized?

12 THE JUROR: Joseph Zinck is a police officer, I'm
13 very good friends with him.

14 THE COURT: Will he be a witness?

15 MR. ROACHE: No, your Honor.

16 MS. HARRIS: We think not.

17 THE JUROR: And I have Robert George, is that the
18 attorney Robert George? I worked at District Court.

19 THE COURT: Which District Court?

20 THE JUROR: Dedham.

21 THE COURT: In Dedham.

22 THE JUROR: And Tracy Lyons, was she a former D.A.
23 in Norfolk?

24 THE COURT: Who is this?

25 THE JUROR: Tracy Lyons, I know Bobby Lyons.

1 THE COURT: You know Officer Zinck well?

2 THE JUROR: Oh, very well. 40 years.

3 THE COURT: Why don't you go back to your seat.
4 Thank you very much.

5 THE COURT: How is Officer Zinck in the case?

6 MR. ROACHE: None. He may be mentioned, but he's
7 not going to be called.

8 THE COURT: Juror 54, Mr. Keck. Hi, sir. You
9 heard about the case?

10 THE JUROR: I remember reading the articles when
11 it initially happened, but I also remember some things in
12 the paper later.

13 THE COURT: Like what?

14 THE JUROR: That there was a question about one of
15 the suspects, but I don't remember the name that had been
16 convicted and that there was some question as to whether or
17 not he had gotten out as a result of something unusual.
18 That's really all I remember.

19 THE COURT: Is there anything about your memory of
20 the case that would make it hard for you to serve? We'll
21 question you more about this in the lobby.

22 THE JUROR: I don't know, did I arrive at an
23 opinion?

24 THE COURT: Right.

25 THE JUROR: No, I didn't arrive at an opinion, it

1 was just more informational news at the time.

2 THE COURT: We'll question you again about that,
3 but I wanted to make sure who the press was disqualifying in
4 some way.

5 THE JUROR: Not that I have any recollection.

6 THE COURT: Okay. Thank you. Ms. Spoerl. Hi,
7 sir.

8 THE JUROR: Hi.

9 THE COURT: Do you remember anything about the
10 case?

11 THE JUROR: Really nothing. I mean, I was
12 scanning on the Internet looking for something at various
13 cases that I knew something, incidentally came into this
14 one.

15 THE COURT: When was this one?

16 THE JUROR: Last night, but I was half asleep, and
17 I don't remember much what I read.

18 THE COURT: How did you know, you knew from the
19 title of the case that you were involved with?

20 THE JUROR: No, I didn't even realize.

21 THE COURT: It was this case?

22 THE JUROR: Yes.

23 THE COURT: Okay. Is there anything that you read
24 that would make it hard for you to be a juror in this case?

25 THE JUROR: Not from that, no.

1 THE COURT: Anything else?

2 THE JUROR: Yeah, but we'll talk later, I guess.

3 THE COURT: You can tell me now.

4 THE JUROR: It just has to do with one of the
5 questions on the questionnaire.

6 THE COURT: Which question?

7 THE JUROR: The one about lawsuits being brought
8 by someone who was either -- was previously convicted and
9 whether or not I thought those were legitimate.

10 THE COURT: And do you?

11 THE JUROR: Well, I wrote down I didn't know
12 because I had never thought too much about it before.

13 THE COURT: Do you have an opinion now?

14 THE JUROR: Yes.

15 THE COURT: What's your opinion?

16 THE JUROR: I think they're not legitimate.

17 THE COURT: Okay. You know what, I'll excuse you.
18 Thank you, sir.

19 THE COURT: Maryellen, Jim should make sure that
20 he says that no one is to do any research or investigate
21 anything about this case, okay. I'll warn the people here,
22 but last night's group I want to make sure there's a warning
23 on the 1-800 number to that effect, and I'll write it out
24 and everyone will agree. Okay. Juror No. 66, Ms. Desmery,
25 Diane Desmery. Hi.

1 THE JUROR: Hi.

2 THE COURT: You knew something about this case?

3 THE JUROR: It just sounds familiar. I don't
4 remember details, it's just something that sounded
5 familiar.

6 THE COURT: Nothing?

7 THE JUROR: Nothing, I don't remember details.

8 THE COURT: Is there anything about what you
9 remember that tilts you in one direction or another?

10 THE JUROR: No. I also wanted to bring up
11 Mark DeLuca in Marshfield, is he the Duxbury head of police?

12 THE JUROR: Yes. I live in Duxbury. I don't know
13 him. I wanted to let you know I know his name.

14 THE COURT: We'll talk to you about that again.

15 THE JUROR: Great.

16 THE COURT: Thank you. No. 68, Mr. Pitman. Hi,
17 Mr. Pitman.

18 THE JUROR: How are you?

19 THE COURT: You've heard about the case?

20 THE JUROR: Yeah, well, I had read about it in the
21 papers, probably saw it on television.

22 THE COURT: Is there anything about what you --

23 THE JUROR: I'm having trouble hearing.

24 THE COURT: I have to keep my voice down. Is
25 there anything about what you remember that would make it

1 hard for you to serve as a juror, make it hard for you to
2 serve?

3 THE JUROR: I don't think I kept up with after the
4 fact, you know, I read about the occurrence and thought it
5 was a tragedy and so forth, but I don't recall the
6 conviction aspect or the trial or anything like that.

7 THE COURT: You indicated you knew someone on the
8 list. Who did you know?

9 THE JUROR: No, no.

10 MR. ROACHE: Time commitment.

11 THE COURT: You can't serve because of time?

12 THE JUROR: I have a medical, some medical tests
13 on the 29th and the 28th.

14 THE COURT: Long scheduled medical tests?

15 THE JUROR: It's been postponed a couple of
16 times.

17 THE COURT: You don't want to postpone it again?

18 THE JUROR: No, but I also have, I'm also
19 scheduled to go to California for the 6th and 7th and 8th.
20 Tickets are all bought.

21 THE COURT: I'll excuse you, thank you,
22 Mr. Pitman. Thank you very much.

23 THE JUROR: Thank you.

24 THE COURT: Juror No. 41, Mr. Lombardo.

25 MR. REILLY: Just 47.

1 THE CLERK: 47 is the next one.

2 THE COURT: Ms. Sullivan, okay. Ms. Sullivan.
3 Hi.

4 THE JUROR: Hi.

5 THE COURT: You indicated that you would have a
6 hard time serving?

7 THE JUROR: I have a procedure scheduled on
8 September 23d.

9 THE COURT: We're actually not sitting that week.
10 Is this surgery?

11 THE JUROR: I'm going to need a couple weeks to
12 recuperate.

13 THE COURT: I'll excuse you. Good luck. Juror
14 47, Ms. Sullivan. No. 50, Mr. Caballera. Hello.

15 THE JUROR: I'm in City Year.

16 THE COURT: So you can't serve?

17 THE JUROR: Yeah. I was going to explain that.
18 My team yesterday got almost into the schools to get to know
19 the teachers and they're going to be in this month.

20 THE COURT: If you're out of this --

21 THE JUROR: I'm the leader, I'm the team leader
22 for the Augusti School.

23 THE COURT: I'll excuse you, but you have to
24 promise me that the next time you get a jury service note
25 you do it.

1 THE JUROR: Of course, yes.

2 THE COURT: You're excused. Mr. Caballera is
3 excused. Mr. Lomba. Hi.

4 THE JUROR: Hi. I've been unemployed for about a
5 year. I got a job interview to go to work as a CNA.

6 THE COURT: Okay.

7 THE JUROR: I want to have a job.

8 THE COURT: You've been unemployed for a year?

9 THE JUROR: Yes. Great shift, by the way.

10 THE JUROR: Thank you.

11 THE COURT: I'll excuse you. Thanks.

12 THE JUROR: Thank you.

13 THE COURT: That's it. We go in the back.

14 (SIDEBAR CONFERENCE WAS CONCLUDED.)

15 THE COURT: Ladies and gentlemen, we're going to
16 interview you one by one. It will not take a long time
17 because we have already interviewed a number of jurors and
18 we don't need that many more. You are not to come back into
19 this room and tell people what the questions were because
20 this is not a civics lesson, you know, where you have to
21 recite it.

22 We really want your honest answers, and we want
23 your honest answers to questions that you'll be hearing for
24 the first time, so it won't take very long. I do anticipate
25 in fact the selection will be completed by one o'clock, so

1 with that, Maryellen, Maryellen, we're ready to go back.

2 All rise.

3 (A recess was taken.)

4 THE COURT: 44, Debra Slade. Hi.

5 THE JUROR: Hi.

6 THE COURT: I don't know whose turn it is. Why
7 don't we start with you, Ms. Scapicchio.

8 MS. SCAPICCHIO: Thank you, your Honor. Hi, my
9 name is Rosemary Scapicchio. Together with Mike Reilly, we
10 represent the plaintiff in this case, Shawn Drumgold. We
11 just want to ask you a couple more questions regarding the
12 long questionnaire that you filled out. On question 27,
13 there was a question, "People who have been wrongfully
14 convicted sometimes bring lawsuits against the police
15 department. Do you favor or oppose these type of lawsuits?"
16 You said you oppose them. Could you tell me why?

17 THE JUROR: The way I was reading it, if the
18 police arrest somebody, it's either usually they seen
19 somebody or the Court system has told them that that person
20 is wanted, so I don't see why somebody should go and sue the
21 police department for doing their job.

22 MS. SCAPICCHIO: So there's never an occasion
23 where you think it would be appropriate for somebody to
24 bring a lawsuit against a police officer?

25 THE JUROR: Yeah, if the police were acting out of

1 their realm of work and habits, you know, but other than
2 that, they're doing their job like anybody else.

3 MS. SCAPICCHIO: So when you say you oppose these
4 lawsuits, you'd never be able to find in favor of anybody
5 who brought a lawsuit like this because you don't think that
6 they could be brought?

7 THE JUROR: Anybody could sue anybody, but I'd
8 have to see both sides if the police were really at fault.

9 MS. SCAPICCHIO: In this case we expect they'll be
10 evidence from police witnesses as well as civilian
11 witnesses, and the allegation is that Detective Callahan
12 withheld some important -- some evidence from the
13 prosecutors in this case that resulted in Shawn Drumgold
14 having an unfair trial. When you were asked to evaluate the
15 evidence of police officers vs. civilian witnesses, would
16 you give an edge to the police officer?

17 THE JUROR: No, I'd be fair at how they would go
18 for it.

19 MS. SCAPICCHIO: Okay. When you say oppose these
20 types of lawsuits, can you give me an example of a situation
21 where you think they would be okay to file a lawsuit? In
22 other words, if the police officer was acting in the course
23 of his duties, is there never an occasion where you should
24 be able to file a lawsuit?

25 THE JUROR: Well, if the police showed brutality

1 or something like that, then that person, but if the police
2 is actually working within their law system, but, you know,
3 doing what they were told if this person is wanted, you
4 know, whether he's innocent or guilty, then that person has
5 been arrested, it's not the police officer's fault that they
6 arrested him, they're just doing their job, and I don't feel
7 that the person should arrest, should sue.

8 MS. SCAPICCHIO: Okay. So would you hold it
9 against Mr. Drumgold because he did sue in this case?

10 THE JUROR: No. I don't really know about this
11 case, never heard of it before.

12 MS. SCAPICCHIO: But you just said that you don't
13 think that a person should sue just because they were
14 arrested wrongfully, you don't think they should sue because
15 the police officer was just doing their job. What did you
16 mean by that?

17 THE JUROR: Saying more brutality as far as the
18 police.

19 MS. SCAPICCHIO: So the only occasion when you
20 think it's appropriate is when there's brutality, is that
21 right?

22 THE COURT: No, let me see if I can help you out
23 here. This is a case about the trial and the claim that the
24 trial was unfair.

25 THE JUROR: Right.

1 THE COURT: The information wasn't turned over
2 that the defendant should have had, that his lawyer should
3 have had, and the failure to turn that over, that was
4 information that would have aided in the defense, and the
5 failure to turn it over made the trial unfair. The law
6 allows someone to sue under those circumstances. The
7 question, do you feel those suits are wrong or would you be
8 able to listen to the evidence in this case?

9 THE JUROR: No, they're not wrong, evidence was
10 withheld, then I understand.

11 THE COURT: Go on, Ms. Scapicchio.

12 MS. SCAPICCHIO: So if after you listen to the
13 evidence that you came to the conclusion that Shawn Drumgold
14 had proven his case and that Detective Callahan had violated
15 his civil rights and he got an unfair trial as a result of
16 that, would you be able to award money damages to Shawn
17 Drumgold?

18 THE JUROR: Yeah, if I find that it was wrong, you
19 know, withholding evidence is one thing and then lying and
20 money, I'd have to hear all the cases as far as, you know,
21 money amounts and all that to go.

22 MS. SCAPICCHIO: When you say withholding evidence
23 is one thing, is that something in your mind that is
24 different?

25 THE JUROR: No.

1 MS. SCAPICCHIO: Okay. Thank you.

2 THE COURT: Go on.

3 MS. HARRIS: Thank you.

4 THE JUROR: I'm all confused.

5 THE COURT: That's okay, you don't know anything
6 about the case, that's fine. Go on.

7 MS. HARRIS: My name is Mary Jo Harris, and I
8 along with my colleagues with Hugh Curran represent
9 Detective Timothy Callahan, and I saw from your
10 questionnaire that you watch Law And Order and CIS and those
11 shows. This case, it comes out of an investigation, so it's
12 not the sort of thing where the police are going to say I
13 saw something happen, but they interviewed witnesses, and,
14 you know, and so on and prepared reports, it's that kind of
15 a case, so you're going to be hearing from police officers
16 who did bits and pieces of an investigation and from
17 civilian witnesses, and from all of that, you know, the
18 question that's ultimately going to be asked is whether you
19 believe that Timothy Callahan deliberately withheld evidence
20 that should have been turned over, and I think what we're
21 trying to find out is whether you can listen to all of the
22 different kinds of witnesses who are coming forward to give
23 their evidence and treat them all fairly when you listen to
24 them testify.

25 THE JUROR: Yes, I can do that.

1 MS. HARRIS: And I noticed also that your
2 son-in-law is a state trooper?

3 THE JUROR: New York, yes.

4 MS. HARRIS: In New York. Have you had any
5 conversations or discussions with your son-in-law about the
6 work that he does?

7 THE JUROR: No.

8 MS. HARRIS: Gives you any insight or feelings
9 about law enforcement?

10 THE JUROR: No. My daughter, grandchildren,
11 that's basically it. They live so far up in New York.

12 MS. HARRIS: And then I think you also noted that
13 your son had been convicted of a B and E?

14 THE JUROR: Yes.

15 MS. HARRIS: Breaking and entering.

16 THE JUROR: My son's had 17 years of being in the
17 wrong place at the wrong time from a kid up. I've spent a
18 lot of time on the other side.

19 MS. HARRIS: Has that experience made you question
20 whether or not he was treated fairly by law enforcement?

21 THE JUROR: No, no, because he's always got the
22 appropriate care for the lawyers, so they all help him.

23 MS. HARRIS: When you say he's had 17 years in the
24 wrong place at the wrong time.

25 THE JUROR: Juvy, always drunk, drinking,

1 partying, hanging out with the wrong crowd which put him
2 into B and E.

3 MS. HARRIS: I see. Do you feel like the police
4 picked on him or singled him out for unfair treatment?

5 THE JUROR: No, because he just happened to be
6 there with the rest of them.

7 MS. HARRIS: When you say he's had lawyers and so
8 on?

9 THE JUROR: Court-appointed, yes.

10 MS. HARRIS: Have you developed an opinion about
11 the quality of the representation that he got along the way?

12 THE JUROR: No, because I tried to stay out of it
13 because he's the one that got in trouble. I ended up having
14 to pay enough as it is, visitation.

15 MS. HARRIS: Where was he held, was he in
16 Massachusetts when this happened?

17 THE JUROR: Yes, Wrentham most times, Dedham, Ash
18 Street, North Dartmouth. He spent some time.

19 MS. HARRIS: All right. Thank you. I'll just see
20 if my colleagues have any questions.

21 MR. ROACHE: I just have a couple questions.

22 THE COURT: You can always count on him. Go on.

23 MR. ROACHE: I've been very good, your Honor. My
24 name is John Roache. I notice that you indicate that you
25 watch LA Law. Is that the reruns of LA Law or are you

1 talking about from years ago?

2 THE JUROR: Just basically years, I just recently
3 got cable, so watching some of the old stuff.

4 MR. ROACHE: And you also watch NCIS, a program I
5 have never watch.

6 THE JUROR: Yeah, maybe.

7 MR. ROACHE: From your experience, do you
8 understand that sometimes criminal investigations take
9 longer than what may be portrayed on TV shows?

10 THE JUROR: Oh, yeah.

11 MR. ROACHE: That TV shows have to put everything
12 into a certain period of time, an hour time slot usually?

13 THE JUROR: Right.

14 MR. ROACHE: And usually there's an end result,
15 but that doesn't really happen in real life?

16 THE JUROR: Yes.

17 MR. ROACHE: You understand that?

18 THE JUROR: Oh, yes.

19 MR. ROACHE: That's all I have.

20 THE JUROR: It's just fun watching.

21 THE COURT: All right. Ms. Slade, I'm going to
22 ask you to call this number after 6:00 today with your juror
23 number, and you'll find out from this call whether or not
24 you're on the final jury, okay. Don't read anything about
25 the case, don't consider anything about the case, and if

1 you're on the final jury, we'll see you tomorrow morning.

2 THE JUROR: 9:00?

3 THE COURT: It's actually going to be 10:00. Call
4 after six.

5 THE JUROR: I'm free to leave?

6 THE COURT: Yes, you are. I have to swear in some
7 citizens in the morning, so we're going to be a little late.
8 The next juror is Karen Bresnahan, juror No. 45. Hi,
9 Ms. Bresnahan. We meet again.

10 THE JUROR: Yes.

11 THE COURT: Let's start with you, Ms. Harris.

12 MS. HARRIS: Good afternoon. My name is Mary Jo
13 Harris. Myself and Hugh Curran represent retired Detective
14 Callahan. Just to follow up what we started talking to you
15 about outside, you had mentioned you had some familiarity
16 with some of the facts or some of the names in the case?

17 THE JUROR: Yes.

18 MS. HARRIS: And you worked for the city?

19 THE JUROR: I did, I worked for the city years
20 ago, I now work for the state.

21 MS. HARRIS: Can you elaborate what it is you
22 recall or what you know about?

23 THE JUROR: Not a whole lot. I recognize the
24 names and some of the details of the case but not a whole
25 lot. I remember when the little girl was shot, and I also

1 remember recently when Mr. Drumgold was released, I remember
2 that in the news.

3 MS. HARRIS: Okay. Do you have any specific
4 recollection of what you learned from reading the news about
5 the release or about the murder, anything, any details that
6 you may have picked up in reading about it?

7 THE JUROR: Five years ago maybe. Nothing
8 specific, just sort of fuzzy around the edges when the Judge
9 was mentioning some of the names and the facts of the case,
10 it was like I kind of remember that.

11 MS. HARRIS: Do you have any memory of what you
12 may have read about the circumstances of Mr. Drumgold's
13 release, about what led to it?

14 THE JUROR: I think I remember, I hope I'm not
15 misspeaking, but that he was released after the conviction
16 was overturned.

17 MS. HARRIS: Do you remember anything about what
18 led to that? I know, believe me.

19 THE JUROR: I honestly don't. I just remember, I
20 mean, that's sort of what stuck in your head was that it had
21 been overturned.

22 MS. HARRIS: The case that we're trying here now
23 is Mr. Drumgold's claim that his trial, that his criminal
24 trial was -- there was something improper about it because
25 of the actions of our client which, of course, you know, we

1 deny, so that's really the issue that's going to be put
2 before the jury here, so what I'm trying to find out from
3 you is whether there's anything that you may have read or
4 been exposed to that causes you to have an opinion one way
5 or the other about the handling of the criminal trial or
6 about the investigation itself?

7 THE JUROR: I don't remember the criminal trial.
8 I just sort of remember, as I said, the names in the
9 newspaper. I read the paper a lot. I read it on the
10 internet, and I deal with in my job now some issues with
11 violence in Boston, so I'm sort of aware of the issues.

12 THE COURT: Your job entails what kind of
13 responsibilities?

14 THE JUROR: I work for the Department of Housing
15 and Community Development. I'm the policy manager, and one
16 of the things that I've recently worked on is a Street Safe
17 Boston Initiative.

18 THE COURT: Okay.

19 THE JUROR: So I'm sort of -- it's just an issue
20 that I deal with at work, one of the many.

21 MS. HARRIS: Yeah, I'm sure. In that capacity do
22 you work with the Boston Police Department or members of it?

23 THE JUROR: No, we fund the Boston Foundation.
24 I'm a funder for the Boston Foundation Initiative.

25 MS. HARRIS: Okay. So you're involved in the

1 policy piece but not the actual putting the teams together
2 and so forth?

3 THE JUROR: No, I was one of the people, we
4 reviewed a proposal and we gave them some funding for the
5 past couple of years for this Street Safe Boston
6 Initiative.

7 MS. HARRIS: That's a program that's funded by the
8 Boston Foundation?

9 THE JUROR: Boston Foundation and coordination
10 with the city, and there's a whole bunch of public and
11 private fundings, so I've gone to some meetings on some
12 violence issues in Boston. It's a summer safety more than
13 anything kind of program.

14 MS. HARRIS: Is one of the focuses of that program
15 any kind of gang interjectory, that kind of work?

16 THE JUROR: Yes, it is. There are what they call
17 street workers who are working in the hardest hit
18 neighborhoods.

19 THE COURT: How long have you been on this job?

20 THE JUROR: I've been in this job, I've been at
21 this agency for 17 years. I've been in this current job for
22 about 6.

23 THE COURT: For 6, okay. And prior, at any point
24 in the course of your job have you dealt with issues, before
25 you got this new job, have you gotten to deal with issues

1 having to do with gangs and violence in Boston?

2 THE JUROR: Not directly, sort of indirectly. I
3 worked for the city, which was sort of the City of Boston,
4 the mayor's office, the jobs in community services, and we
5 used to fund a bunch of youth programs and different City of
6 Boston programs.

7 THE COURT: Did you work with the police in
8 connection with those?

9 THE JUROR: Never directly, no.

10 MS. HARRIS: I think that's all I have unless you
11 guys have anything else.

12 MR. ROACHE: What were the circumstances under
13 which you left the city for working for the city?

14 THE JUROR: For another job, I went to the state.
15 It was a better job, nothing.

16 MR. ROACHE: That's all I have.

17 THE COURT: Ms. Scapicchio.

18 MS. SCAPICCHIO: Thank you. Hi, my name is
19 Rosemary Scapicchio. Together with Mike Reilly, we
20 represent the plaintiff, Shawn Drumgold. Your work with the
21 City of Boston, you may have noticed from the questionnaire
22 that the City of Boston is a named defendant in this case.
23 Do you think your prior employment for the City of Boston
24 would come into your thinking if we were asking for a damage
25 award from the City of Boston?

1 THE JUROR: I don't think so. I've sort of worked
2 with a quasi public agency that I worked for. It wasn't
3 directly -- it was at one point the mayor's office of jobs
4 and community services, then it merged with the Economic
5 Development Industrial Corporation, so it wasn't directly
6 the City of Boston that I worked for. We worked very
7 closely with the city, but I don't believe so, no. It was a
8 long time ago.

9 MS. SCAPICCHIO: In this case, you were -- let me
10 ask you this. With respect to your job and the funding that
11 you do, would your experience regarding funding with respect
12 to the City of Boston enter into your deliberations when you
13 were determining damages, in other words, your awareness of
14 how much the city would pay or anything like that?

15 THE JUROR: No, I wouldn't know that, no. I
16 didn't fund directly the city, it was more the Boston
17 Foundation, which is a private philanthropic organization.

18 MS. SCAPICCHIO: In this case, we expect that you
19 will hear some evidence that Detective Callahan withheld
20 some evidence from the prosecutors that resulted in
21 Shawn Drumgold not getting a fair trial. You'll be asked to
22 evaluate the evidence of police officers and the testimony
23 from civilian witnesses. Would you give either side an
24 edge, so to speak, in other words, would you credit the
25 police more than you would credit a civilian witness?

1 THE JUROR: That's sort of hard to answer. I
2 would hope not, but I don't know. Just I grew up, my dad
3 was a firefighter for 32 years, a lot of our family friends
4 were police officers, my father's best friend was chief of
5 police for years. It's been part of my life growing up.

6 MS. SCAPICCHIO: Right. There's nothing wrong
7 with it.

8 THE JUROR: I'd like to think that I'm fair and
9 impartial, but I don't think it would enter into it.

10 MS. SCAPICCHIO: Okay. So you think you could put
11 aside the relationships that you have with your father and
12 the relationships growing up with police officers and listen
13 to the testimony in this case to determine whether or not
14 you credit the witness's testimony?

15 THE JUROR: I think so.

16 MS. SCAPICCHIO: Do you think there was any
17 occasion in which you would give a police officer's
18 testimony more credit?

19 THE JUROR: I can't think of an occasion right
20 now, not unless it was somebody I knew which that wouldn't
21 be the case.

22 MS. SCAPICCHIO: You had indicated on your
23 questionnaire that you have a cousin that's a federal agent?

24 THE JUROR: Yes.

25 MS. SCAPICCHIO: Family friends that are police

1 officers, a nephew that's a probation officer?

2 THE JUROR: Yes.

3 MS. SCAPICCHIO: Would any of those relationships
4 affect your ability to evaluate the evidence if the evidence
5 was going to conflict pretty drastically between what a
6 police officer says and what a civilian witness says?

7 THE JUROR: I don't think so. It's very hard, I'm
8 sorry, I don't mean to be so wishy washy, it's a very hard
9 thing to think about. I would hope not.

10 MS. SCAPICCHIO: Okay. Then on question 27, you
11 were asked, "People that have been wrongfully convicted
12 sometimes bring lawsuits against the police department. Do
13 you favor or oppose those types of lawsuits?" And you
14 wrote, "Unsure, would depend on the circumstances."

15 THE JUROR: It's something I have never thought
16 about before, that's all, and, you know, I'm the type of
17 person I sort of think about things before I make a
18 decision, so I think that's probably circumstances where
19 yes, I would support it.

20 MS. SCAPICCHIO: But it's not the relationships
21 that you had with your father and family friends that would
22 prevent you from deciding a case that involved a wrongful
23 conviction?

24 THE JUROR: No, I don't think so.

25 MS. SCAPICCHIO: Is there anything specific about

1 the idea of wrongful convictions that doesn't sit well with
2 you?

3 THE JUROR: Aside from the fact that it was wrong?

4 MS. SCAPICCHIO: Right.

5 THE JUROR: I mean, no, I think it's unfortunate,
6 that's all.

7 MS. SCAPICCHIO: Okay. But if the evidence --

8 THE JUROR: It seems like a light word, I don't
9 mean it as light as that.

10 MS. SCAPICCHIO: I understand. If the evidence
11 suggested that Shawn Drumgold were to prove his case, could
12 you award him damages in this case if he were to prove that
13 Detective Callahan withheld evidence that resulted in an
14 unfair trial? Could you award him damages?

15 THE JUROR: If that's what we're supposed to do, I
16 suppose so, yes.

17 MS. SCAPICCHIO: Thank you.

18 THE JUROR: I'm sorry.

19 THE COURT: No, that's a good answer. Okay. I'm
20 going to ask you to call this number. Don't do any research
21 about the case ever. Don't talk to anyone about what this
22 discussion was, but please call this number after 6:00 to
23 see if you're a member of the final jury. You need your
24 juror number when you call, and if you're a member of the
25 final jury, we'll see you tomorrow morning at ten.

1 THE JUROR: Thank you.

2 MS. SCAPICCHIO: Thank you very much.

3 MR. ROACHE: Thank you.

4 THE COURT: One more. Ms. Schiappa.

5 THE JUROR: Yes.

6 THE COURT: Ms. Scapicchio, you go first.

7 MS. SCAPICCHIO: Thank you, your Honor. Hi,
8 Ms. Schiappa. My name is Rosemary Scapicchio. Together
9 with Mike Reilly, we represent Shawn Drumgold. We expect in
10 this case you'll hear evidence that is from plaintiff
11 witnesses and civilian witnesses, and the allegations are
12 that Detective Callahan withheld some evidence from the
13 prosecutors that we say resulted in Shawn Drumgold getting
14 an unfair trial. If you were asked to evaluate the
15 testimony of police officers that would conflict with the
16 testimony of civilian witnesses, would you give the police
17 officers any more weight because they're police officers?

18 THE JUROR: Absolutely not.

19 MS. SCAPICCHIO: And in this case if Shawn
20 Drumgold were to prove his case that Detective Callahan did
21 withhold evidence that resulted in an unfair trial to
22 Mr. Drumgold, would you be able to award money damages to
23 Shawn Drumgold?

24 THE JUROR: I would have to have more information,
25 I think.

1 MS. SCAPICCHIO: Okay. And you indicated, I
2 think, on your questionnaire that you're a self-employed
3 office assistant?

4 THE JUROR: Yes.

5 MS. SCAPICCHIO: Is the fact you're self-employed
6 going to affect your ability to sit on this trial through
7 the 15th of October, if necessary?

8 THE JUROR: No, no. I work with my husband, he's
9 a CPA, it's our own business.

10 MS. SCAPICCHIO: Great, thank you so much.

11 THE COURT: Not yet.

12 MS. HARRIS: Not so fast. Nice try. Good
13 afternoon, ma'am.

14 THE JUROR: There's two sides, okay, I'm sorry.

15 MS. HARRIS: Right. We'll speed through it, I
16 promise. Together with Mr. Curran here, we represent
17 Detective Callahan, and as you said, there's two sides, so
18 what we're looking to explore is whether if you're chosen to
19 sit on the jury of this case that you'll be able to listen
20 to the plaintiff's presentation because they go first and
21 put on their best case, and then the defendant has the
22 opportunity to give his side of the story, and as you can
23 imagine, there are very sharp differences between our view
24 of the facts, so, you know, knowing that, would you be able
25 to sit as a juror in this case and be able to sort of hold

1 your judgment in abeyance until the end when you have all
2 the information in front of you?

3 THE JUROR: Sure.

4 MS. HARRIS: Do you have any experience, positive
5 or negative, with the law enforcement or the criminal
6 justice system?

7 THE JUROR: No, not at all.

8 MS. HARRIS: So there's nothing that you're
9 bringing here that would cause you to weigh more heavily
10 than the other?

11 THE JUROR: No, no.

12 MS. HARRIS: Anything you want to ask?

13 MR. ROACHE: Just very briefly. My name is
14 John Roache, and one of my clients is the City of Boston.
15 Ms. Schiappa, have you ever lived in the city?

16 THE JUROR: No, I haven't.

17 MR. ROACHE: Have you had any dealings with any of
18 the employees of the city including whether they be police
19 or fire or office workers or parking ticket meter maids?

20 THE JUROR: No.

21 MS. HARRIS: You've had a blessed life.

22 MR. ROACHE: That's all I have.

23 THE COURT: Okay. There's a number to call at
24 6:00 today with your juror number, and you'll find out. We
25 don't want you to do any research, and if you're on the

1 final jury, you come tomorrow at 10:00. Thank you.

2 THE CLERK: Judge, Jim came up and said the woman,
3 she was from L.A., she went to Stanford, she might have
4 problems.

5 MS. HARRIS: Lanita Foley.

6 THE JUROR: Yes. She called and said work is very
7 stressful for her right now. She called a little while ago,
8 and I had to tell you this because she's in the pool and
9 that she didn't feel comfortable sitting on the jury because
10 she'd like to be deferred because she's having problems at
11 work meaning that it's very, very busy, it's not a good
12 time.

13 THE COURT: We'll select one more. Thank you for
14 telling us now. No. 17 is excluded. We'd select one more.
15 The next one is Robert Oldham.

16 THE COURT: Hi, Mr. Oldman. I think we start, I
17 have no idea.

18 MS. HARRIS: I think it's my turn.

19 THE COURT: Sorry.

20 MS. HARRIS: That's okay. Good afternoon, sir,
21 how are you?

22 THE JUROR: Good. Yourself?

23 MS. HARRIS: Good, thanks. My name is Mary Jo
24 Harris, and with Hugh Curran we represent retired Detective
25 Callahan. He's a defendant in this action. I'm going to

1 ask before we go further, I see you have a job in the
2 financial field. Would sitting on this jury cause a problem
3 if we were to go as long as we hope not to go, which is to
4 the middle of October?

5 THE JUROR: It starts getting into sort of a busy
6 time for me at that point in time.

7 MS. HARRIS: That's like the furthest, the longest
8 that we anticipate, and we don't expect that it will take us
9 that long.

10 THE JUROR: Probably the second week of October
11 that I start getting rather busy at that point in time.

12 MS. HARRIS: If we concluded before then, you'd be
13 okay?

14 THE JUROR: Yes.

15 MS. HARRIS: This case, just to talk very briefly,
16 is going to involve witnesses who are civilian witnesses,
17 police officers, maybe lawyers all testifying about events
18 that occurred some time ago.

19 THE JUROR: Yes.

20 MS. HARRIS: And knowing that, would you have any
21 inclination to credit one type of witness over another
22 because of their profession or background?

23 THE JUROR: No, no, I don't think I would.

24 MS. HARRIS: Have you had any positive or negative
25 experiences with law enforcement or the civil justice system

1 in general?

2 THE JUROR: No.

3 MS. HARRIS: I'm going to probably defer to my
4 colleagues, see if these gentlemen have anything to ask.

5 MR. ROACHE: Good afternoon, sir. My name is John
6 Roache, and one of my clients is the City of Boston. I
7 notice that you do work within the city?

8 THE JUROR: Yes, I do.

9 MR. ROACHE: Have you had any positive or negative
10 experiences with the city itself or any of its employees
11 while you've been working in the city?

12 THE JUROR: Not with city employees, no.

13 MR. ROACHE: Have you lived in the City of Boston?

14 THE JUROR: Yes, I did.

15 MR. ROACHE: When was that, sir?

16 THE JUROR: Back in I want to say, when did I
17 graduate, '87, I lived in the city from '88 to '93.

18 MR. ROACHE: Okay. And what part of the city did
19 you live?

20 THE JUROR: I did live in Roxbury.

21 MR. ROACHE: In Roxbury?

22 THE JUROR: Yes.

23 MR. ROACHE: Were you aware of or did you hear
24 about the killing of Tiffany Moore during that period of
25 time?

1 THE JUROR: You know, I lived in Roxbury, he lived
2 right behind Pat Connors' Pub right off of Blue Hill Ave.,
3 so at that point in time there was a lot of I think city
4 violence at that point in time and a lot of murders in that
5 area at that time, so I don't remember that case
6 particularly.

7 MR. ROACHE: You don't remember the Tiffany Moore
8 case in particular?

9 THE JUROR: No.

10 MR. ROACHE: Do you remember anything positive or
11 negative in the press at that time being said about the
12 Boston Police Department or any of its officers?

13 THE JUROR: Not negatively about the police
14 officers or the City of Boston, no.

15 MR. ROACHE: Okay. Were you a student or were you
16 out of school at that time?

17 THE JUROR: I was out of school at that point.

18 MR. ROACHE: That's all I have, thank you.

19 THE COURT: Ms. Scapicchio.

20 MS. SCAPICCHIO: Hi, my name is Rosemary
21 Scapicchio. Together with Mike Reilly we represent the
22 plaintiff, Shawn Drumgold in this case.

23 THE JUROR: Yes.

24 MS. SCAPICCHIO: We expect in this case that
25 you'll hear evidence from police officer witnesses as well

1 as evidence from civilian witnesses.

2 THE JUROR: Yes.

3 MS. SCAPICCHIO: And you're going to be asked to
4 evaluate their testimony, and in a situation where we expect
5 that some evidence will suggest that Detective Callahan did
6 not turn over information to the prosecutors that resulted
7 in Shawn Drumgold's wrongful conviction and an unfair trial,
8 if that were the evidence and you were asked to evaluate
9 testimony from a police officer witness vs. testimony from a
10 civilian witness, would you give the police officer any more
11 credit because he's a police officer and he's held to a
12 higher standard or anything like that?

13 THE JUROR: No, not to my knowledge. I'd have to
14 listen to the evidence. I wouldn't want to make a judgment
15 on that right now until I heard the evidence and you saw the
16 evidence.

17 MS. SCAPICCHIO: You'd wait until you heard all
18 the evidence, then you'd make a determination?

19 THE JUROR: Yes.

20 MS. SCAPICCHIO: When you lived behind Packy's,
21 did you say?

22 THE JUROR: Yes.

23 MS. SCAPICCHIO: Right in the Roxbury-Dorchester
24 area. You don't remember hearing anything about the murder
25 of a little girl on a mailbox back in 1988?

1 THE JUROR: I remember there was a few different
2 killings of a number of people. I remember back then we'd
3 pick up the Sunday Boston Globe, and they used to outline
4 all the murders in the area at that point in time, and we
5 were counting the ones that were on our street actually.

6 MS. SCAPICCHIO: Is this one of the ones you
7 counted?

8 THE JUROR: You know, honestly, I don't.

9 MS. SCAPICCHIO: When you say you were counting
10 the ones that were on the street, did you have some feeling
11 about the number of murders that were in the neighborhood,
12 did you have some feeling about the way that the police were
13 investigating these cases, did you think they were
14 overwhelmed, anything like that?

15 THE JUROR: No, we were living there at a time I
16 think that was not a very good time, you know, there was a
17 lot of violence in the area, you know, nothing that, you
18 know, I guess we were more alarmed than anything else.

19 MS. SCAPICCHIO: Did you form any opinions about
20 the kids that were hanging on the corners in those
21 neighborhoods?

22 THE JUROR: Honestly, we would come home, I worked
23 in the city at that point, we'd come home from the city,
24 work on the house, then go to work the next day, and on
25 weekends we would, you know, work on the house, then go out

1 with my friends. I honestly didn't spend any -- honestly,
2 the time I spent in the area was from the time I left my
3 door to get in my car, that's it.

4 MS. SCAPICCHIO: Just to follow up something
5 Ms. Harris said, you were saying that it would be getting
6 rather busy at the second week of October in your current
7 position?

8 THE JUROR: Yeah.

9 MS. SCAPICCHIO: Does that mean that you don't
10 think you'd be able -- if you were deliberating at that
11 time, we may have to sit full days. Does that mean you
12 couldn't sit full days?

13 THE JUROR: That would be difficult at that point
14 in time for me because we do -- I work for Met Life. We're
15 a public company, we do file --

16 MS. SCAPICCHIO: Public offerings?

17 THE JUROR: -- not public offerings but 10Qs at
18 that point in time for multiple clients.

19 MS. SCAPICCHIO: So you'd need to be available for
20 your work that last week of October?

21 THE JUROR: Yes, after sort of the probably to me
22 business day 10 on.

23 THE COURT: It is not likely the case but it's
24 possible, and if it did, what you would have during that
25 week would be the deliberations, and during the

1 deliberations, that's when we ask the jury to stay all day.

2 THE JUROR: Yes.

3 THE COURT: So probably, it's possible it would be
4 the second week in October. Would that preclude your
5 participating, or do you think you could stretch things to
6 that point, if necessary?

7 THE JUROR: I stretch on the normal day. My
8 normal day is, you know, probably similar to a lot of you
9 folks around the table, it's seven in the morning to seven
10 or eight at night.

11 THE COURT: Do you think you could do that?

12 THE JUROR: That's what I do typically.

13 THE COURT: Right. I'm saying if the
14 deliberations were the second week in October, would you be
15 able to spend all day with us?

16 THE JUROR: Probably I would say no. That would
17 be difficult for me.

18 THE COURT: I'm going to excuse you because I
19 don't want to run the risk that after sitting on this case
20 you couldn't stay with us at the end. Thank you.

21 THE JUROR: Thank you.

22 MS. HARRIS: Just for your information, No. 54
23 says that he has litigation involving your prior firm.

24 THE COURT: Oh, is that right? Which prior firm?
25 I had a number of prior firms.

1 MS. HARRIS: He doesn't say, but he mentioned you
2 by name.

3 MS. SCAPICCHIO: Keck. It's question 22, your
4 Honor.

5 MR. CURRAN: His mother was also a victim of a
6 violent crime.

7 MS. HARRIS: She's deaf in one ear as well.

8 MS. SCAPICCHIO: She's also concerned about the
9 length of the trial.

10 THE COURT: In order to save time, would everyone
11 generally agree that Antosca is not appropriate because of
12 her answers in open court so we don't have to deal with
13 this?

14 MS. SCAPICCHIO: That's fine with me.

15 MR. ROACHE: Your Honor, I think we should inquire
16 of her. She's retired from the Dedham District Court. I
17 don't know how long she's worked there. She said she knew
18 Robert George.

19 THE COURT: Hi, won't you sit down.

20 THE JUROR: Your Honor.

21 THE COURT: Start with Ms. Scapicchio. No,
22 Ms. Harris, I think.

23 MS. HARRIS: That's fine.

24 THE COURT: I have no idea.

25 MS. HARRIS: Good afternoon, my name is Mary Jo

1 Harris. I along with Hugh Curran represent Detective
2 Callahan. We're going to follow up a little bit on the
3 responses you had given us earlier. Would there be anything
4 about the anticipated length of this trial that would be a
5 problem?

6 THE JUROR: Not that it would keep me away, but I
7 came back here to come to this from my summer house in
8 Maine, and we would be going back if I'm not called. I
9 didn't want to use it as an excuse, but that's the truth.

10 MS. HARRIS: You're good. How long had you
11 planned to be up there?

12 THE JUROR: We usually stay through October.

13 MS. HARRIS: We also noticed that you know a
14 couple of the attorneys, I think Robert George and
15 Tracy Lyons?

16 THE JUROR: Yes, I know them from my job at the
17 Dedham District Court. They both work there also.

18 MS. HARRIS: If they were to appear as witnesses,
19 which we anticipate that one or both of them may, would you
20 have any difficulty treating them like normal witnesses,
21 that is, giving their testimony the same weight as you would
22 give anyone else who you didn't know?

23 THE JUROR: I wouldn't have a problem with that I
24 don't believe, no.

25 MS. HARRIS: This is a case which alleges that

1 there was a wrongful conviction, and obviously you know
2 this, there's two sides to every story here, and
3 Mr. Drumgold is going to present evidence that he believes
4 supports his claim, and Detective Callahan through us is
5 also going to be presenting evidence we think rebutting
6 that. There's going to be testimony given by civilians,
7 police officers, lawyers, and with that we anticipate that
8 it's going to take about six weeks, and really what we're
9 just looking for anything that you can identify within that
10 would give you pause about sitting in a case like this?

11 THE JUROR: Not with the witnesses, even though I
12 do know one of the police officers very well.

13 MS. HARRIS: Right. We don't anticipate that
14 Joe Zinck would be called.

15 THE JUROR: But the only other thing I would tell
16 you is that I do have a hearing problem. I put it on my
17 questionnaire.

18 MS. HARRIS: Yes.

19 THE JUROR: As long as I look at you directly and
20 watch your lips, I can understand, you know, hear pretty
21 much what's going on, but as this morning when the
22 introductions were being made by the attorneys, I would miss
23 some of it as they turned away or looked to the back or
24 whatever. I could understand the Judge quite well because
25 with the microphone, and I could really focus on watching

1 her speak, but other than that, sometimes I do miss things
2 that are off to the side.

3 MS. HARRIS: You had mentioned having a long
4 friendship with Joe Zinck?

5 THE JUROR: Yes.

6 MS. HARRIS: Would your relationship with him
7 cause you to give more credit to a police officer witness
8 particularly because the Boston, you know, Tim is a former
9 Boston police officer and former homicide detective. Would
10 that --

11 THE JUROR: I would hope not, but I have to say,
12 and this goes back to also working at the courthouse, I do
13 have probably a little more of a bias to the law enforcement
14 side of the case. That's just the truth.

15 MS. HARRIS: That's all we're asking.

16 THE JUROR: That comes from my job, too.

17 THE COURT: You know what, both because I feel
18 awful about your vacation and because of the hearing issue
19 and because of where you work, we'll excuse you. Go back to
20 Maine.

21 THE JUROR: Thank you very much.

22 MS. HARRIS: Thank you so much.

23 THE COURT: Thank you for offering.

24 MS. SCAPICCHIO: Thanks very much.

25 THE COURT: Now is Mr. Keck.

1 MS. SCAPICCHIO: If you look at No. 30, I think
2 he's got some issues. No. 30, he has reservations for a
3 flight to see his 75-year old mother on the 15th of
4 September.

5 THE COURT: Hi, Mr. Keck. We won't go any
6 further. You have a flight to see your mother on September
7 15th. Where is she?

8 THE JUROR: Michigan.

9 THE COURT: That's her birthday?

10 THE JUROR: 75th.

11 THE COURT: I'll excuse you. Ms. Malaver is the
12 next. We're still searching for one. Hi. This is you're
13 Stephanie Malaver?

14 THE JUROR: Malaver.

15 THE COURT: I think Ms. Scapicchio.

16 MS. SCAPICCHIO: Thank you, your Honor. Hi,
17 Ms. Malaver. My name is Rosemary Scapicchio. Together with
18 Mike Reilly, we represent the plaintiff, Shawn Drumgold.
19 The allegations in this case are that Detective Callahan
20 withheld some information from the prosecutors that
21 prosecuted Shawn Drumgold, and as a result he didn't get a
22 fair trial. You're going to be asked to evaluate the
23 testimony of police officer witnesses which we expect is
24 going to vary quite significantly from civilian witnesses
25 who might come in and testify. Would you give the police

1 witnesses any more credit because they're police officers?

2 THE JUROR: No.

3 MS. SCAPICCHIO: Okay. And in this case if you
4 were at the conclusion of the case to come to the conclusion
5 that Shawn Drumgold proved his case that Detective Callahan
6 did withhold information that resulted in an unfair trial to
7 Shawn Drumgold, would you be able to award him money damages
8 if the Court instructed you that that's what you could do?

9 THE JUROR: Yes.

10 MS. SCAPICCHIO: And I noticed from your
11 questionnaire that you're an engineer?

12 THE JUROR: Yeah.

13 MS. SCAPICCHIO: And as part of your job, is there
14 any problem with you being out of your work until
15 potentially October 15th, although we hope it doesn't go?

16 THE JUROR: I'm unaware of a problem.

17 MS. SCAPICCHIO: Great, thank you so much.

18 THE COURT: Hold on.

19 MS. HARRIS: Almost. Hi, I'm Mary Jo Harris and I
20 and Hugh Curran represent Detective Timothy Callahan, and I
21 notice from the questionnaire you live in South Boston?

22 THE JUROR: Yes.

23 MS. SCAPICCHIO: For about five years?

24 THE JUROR: Yes.

25 MS. SCAPICCHIO: Is that when you moved to Boston

1 about five years ago?

2 THE JUROR: No, I've been here for 11 years.

3 THE COURT: Have you lived in the city the entire
4 time?

5 THE JUROR: I was in Brookline, so close.

6 MS. HARRIS: Close enough. Obviously this case
7 involves allegations made about the activities of Boston
8 police officers. Have you had any experience, either
9 positive or negative, with any members of the Boston Police
10 Department since you've lived here?

11 THE JUROR: No.

12 MS. HARRIS: I just lost my train of thought,
13 excuse me. I'll pass over.

14 MR. ROACHE: Just very briefly, Ms. Malaver, where
15 you live in South Boston at 45 West Broadway, that's about a
16 block or so from the old G Street projects. Are you aware
17 of those?

18 THE JUROR: Vaguely, yeah.

19 MR. ROACHE: Do you know anybody who lives there?

20 THE JUROR: No.

21 MR. ROACHE: Do you live in the old church?

22 THE JUROR: Yes.

23 MR. ROACHE: That's all I have, thank you.

24 MS. HARRIS: Thanks.

25 THE COURT: I will show you a number to call after

1 6:00, and you need your juror number when you call up, and
2 the voice on the phone will let you know whether you're
3 going to be part of the jury tomorrow, and if you are, we'll
4 welcome you tomorrow morning.

5 THE JUROR: My juror number is the nine digit
6 number?

7 THE COURT: That's right. Don't research the
8 case. The first thing you will hear with the case will be
9 tomorrow morning. Okay?

10 THE JUROR: Okay.

11 THE COURT: Thank you.

12 At this point if you want, we'll do challenges in
13 open court. If the defendants want to stay, and you can go
14 into court. The jurors, the remaining jurors can be
15 excused, and you'll do the challenges based on your notes of
16 the various jurors.

17 MS. SCAPICCHIO: Can we have some time?

18 THE COURT: Take 15 minutes. We'll resemble again
19 at 12:45, okay.

20 (A recess was taken.)

21 MS. SCAPICCHIO: I think the issue regarding the
22 motion in limine regarding the responsibility of Detective
23 Callahan was to tell Assistant D.A. Phil Beauchesne or to
24 tell a prosecutor in the office because I would open
25 differently depending on.

1 THE COURT: I have gone back and forth on that,
2 and I now believe that the defendants are right in this
3 respect. The obligation is to turn over to the prosecutor
4 in a meaningful way, in a way that we'll make sure it winds
5 up in the prosecutor's, in the relative prosecutor's hands.
6 If the issue was if a police officer, for example, slid a
7 piece of paper under the door in the middle of the night or
8 gave it to a secretary who had no responsibility, then there
9 would be an argument that that would be an intentional
10 withholding. In this situation, and you have to correct me
11 if I'm wrong, the facts are that the Prosecutor Connolly had
12 the information and Beauchesne did not?

13 MR. CURRAN: We read Beauchesne differently,
14 Judge, we read the allegation that Beauchesne says that he
15 did, but they say in their view of his testimony at the
16 motion for new trial that it says he didn't.

17 THE COURT: So the question is under these
18 circumstances, is there any body of law that says that for
19 the prosecutor that is essentially down the hall from
20 Beauchesne, right, I mean?

21 MR. ROACHE: Next door.

22 THE COURT: That giving it to one was not
23 reasonably going to lead to giving it to the other, then I
24 don't understand how, again, one can imagine a set of facts
25 where giving the information to one person in the D.A.'s

1 Office is so perfunctory, that it's not likely to get to its
2 intended target. Those are not the facts here, so to some
3 degree saying that it has to physically be in the hands of
4 Beauchesne when it is physically in the hands of the
5 prosecutor next door, I don't think the case law goes that
6 far, and if it did, I think there would be a very
7 substantial qualified immunity argument.

8 What I would be prepared to do is to say that the
9 information has to be turned over in a way, and we can play
10 with the language, in which it is reasonably foreseeable
11 that it will get in the hands of the intended prosecutor,
12 so, in other words, you can argue that this was a
13 contrivance giving it to one rather than the other, but I'm
14 not going to direct the jury that unless they find it's
15 physically in the hands of Beauchesne that it is not,
16 doesn't fulfill their obligation.

17 So, in other words, what I'm saying is that I
18 would say you turn it over to the prosecutor's office in a
19 way that will mean that it's reasonably foreseeable that it
20 will get to the intended target, which would be Beauchesne,
21 and you can argue that this wasn't, and they can argue that
22 it was. But there's no case, you couldn't provide me with a
23 case, I couldn't find a case. Broadly speaking, it's true
24 that there's a difference between the conviction, reversal
25 of the conviction theory under Brady and 1983, but 1983 is

1 individual liability.

2 MS. SCAPICCHIO: Exactly.

3 THE COURT: And where if the evidence was as I
4 recall that the police officer gives it to the prosecutor
5 that he's most familiar with who's next door to Beauchesne,
6 it seems to me to say that that's not good enough as a
7 matter of law it seems to me would be wrong, and to say that
8 it would be not good enough as a matter of law would really
9 open the door to qualified immunity because there's not a
10 single case that says that that has to be done.

11 MS. SCAPICCHIO: Judge, I think that the standard
12 between the Brady standard knowledge of one is knowledge of
13 all is different from the 1983 standard where it has to be
14 reasonably foreseeable to Detective Callahan assuming the
15 jury believes he turned something over to A.D.A. Connolly.

16 THE COURT: Right, but what I'm saying that is a
17 fact, I will give broad language about the nature of the
18 Brady obligation and include in it language that it has to
19 be turned over in a way that it's reasonably foreseeable
20 that it would get to the appropriate prosecutor, but I will
21 not say that the failure of Callahan to put it in the hands
22 of Beauchesne is the violation.

23 You can argue either you disbelieve Connolly,
24 disbelieve Beauchesne, you can argue that this was giving it
25 to one in a way that it's not reasonably foreseeable to give

1 it to the other, but why shouldn't they be entitled to an
2 inference that giving it to Connolly is giving it to
3 Beauchesne?

4 MS. SCAPICCHIO: Because under that scenario then
5 Detective Callahan could give it to Connolly, if you believe
6 that testimony, knowing it would never get to Beauchesne.

7 THE COURT: If you can prove that.

8 MS. SCAPICCHIO: Right.

9 THE COURT: But it seems to me it's your burden to
10 prove that.

11 MS. SCAPICCHIO: But there's a scenario under your
12 logic that Detective Callahan in giving it to Connolly could
13 understand and know at that point in time it will never get
14 to Beauchesne and ultimately never get to Drumgold.

15 THE COURT: What I'm saying, Ms. Scapicchio, is
16 that I can envision a scenario where an officer slips
17 something under the secretary's desk or puts it in an inbox
18 in a large metropolitan urban office where who knows where
19 it's going to go, but the facts in this case suggest that it
20 arguably went to one D.A. who's next door to the other D.A.
21 in a relatively small office.

22 It seems to me the defendants are entitled to the
23 inference that it got to its intended target, and you're
24 entitled to argue that it did not. What I won't do is to
25 say unless Callahan put it in the hands of Beauchesne. You

1 can argue what you wish to argue because it seems to me that
2 there's an argument that this has to be reasonably
3 foreseeable, but I won't direct that to fulfill the 1983
4 obligation Callahan has to put it in the hands of Beauchesne
5 because were I to do that, there is a qualified immunity
6 argument. There is simply no law that says that the
7 obligation has to be fulfilled directly like that.

8 Beauchesne is on vacation, I give it to Connolly,
9 you know, because Connolly is going to likely give it to
10 Beauchesne, because I tell Connolly to give it to
11 Beauchesne. I can't imagine 1983 obligation would turn on
12 that kind of formality, and certainly no case says so.

13 You can argue that this was a contrivance, that
14 this was intended to keep it from Beauchesne and nominally
15 conform to the obligations of law. They can argue the
16 opposite, but I won't fashion an instruction that says
17 unless you give A to B it's a 1983 violation. It might. It
18 might not be, and the question is whether these are the
19 circumstances in which it would be, but I can't forecast
20 that in advance. I went back over the transcript. It seems
21 to me I can't weigh in one way or the other.

22 Now, that means that my instructions would be
23 somewhat different than the instructions I gave in the first
24 case, and if the jury came back with the same kind of
25 question, what I would say is it's up for them to decide

1 whether it was reasonably foreseeable to Callahan that the
2 information would not get to Beauchesne under the
3 circumstances that he turned it over, but I will not say as
4 a matter of law unless police officer A puts it in the hands
5 of prosecutor B, it's a violation.

6 You're entitled to argue that, and I think this is
7 the safer way to proceed. This then becomes an articulation
8 of an existing exculpatory Brady obligation rather than
9 fashioning a new rule because I think the defendants are
10 quite right, maybe it should be the rule, but it certainly
11 would be a new rule, so that's what I'm going to do. I'll
12 give you 15 minutes now.

13 MR. CURRAN: The other issue is the David Meier
14 motion in limine that was filed.

15 THE COURT: Actually I can rule on that as well.
16 David Meier is accessible to both sides. If a witness in
17 three depositions never says anything of relevance to this,
18 but if let's say in a subsequent interview, Ms. Scapicchio,
19 he said something which was of relevance, she's entitled to
20 call him. It's not like an expert where he's bound by the
21 reports that he submitted. Do you have any information from
22 David Meier that suggests that he will testify to Callahan
23 admissions?

24 MS. SCAPICCHIO: Yes.

25 THE COURT: Okay. Well then I think she's

1 entitled to put him on.

2 MS. HARRIS: Then we'll ask for a voir dire
3 because I've spoken to him, and I don't believe that to be
4 the case. I'm trying to figure how far into the motion for
5 new trial we're going to litigate that in this case, and,
6 frankly, I'm trying to limit testimony from the D.A.'s
7 Office from the mid to late '90s about what they found in a
8 file that has been torn apart, as both sides have agreed, on
9 various pieces of evidence that things are missing.

10 I believe that the purpose of Meier and Paul Linn
11 being called as witnesses is to say these people have
12 obligations, and in 1994, when they took over the case, or
13 '98, or whenever it is, they didn't find anything,
14 therefore, it never existed, therefore you can infer such
15 and such.

16 If I'm wrong, then I apologize in advance, but
17 I've lived with David Meier for many years from before and
18 during and after the motion for new trial and discovery.

19 THE COURT: Let me block off.

20 MS. HARRIS: Yes.

21 THE COURT: If the purpose, as I said, was a
22 keeper of the records issue, which is in '94, when I looked
23 in the file, it had these contents.

24 MS. HARRIS: Right.

25 THE COURT: Then you have a relevance argument or

1 at least we could have a voir dire on that --

2 MS. HARRIS: Right.

3 THE COURT: -- which is does the state of the
4 record in '94 reasonably reflect what it had been in '89?
5 Is it '88?

6 MS. HARRIS: '88.

7 THE COURT: So that's one question, and we can
8 have a voir dire on that. I don't know enough about what
9 happened to the file between '88 and '94, so if the issue is
10 in preparing for the motion for new trial the defendant in
11 this case made admissions to Meier, then that would be a
12 relevant question about what he did or didn't do.

13 If those admissions are not in his deposition,
14 that doesn't bother me, if he's making it now, that only
15 suggests he'll testify on the stand and you'll rip him apart
16 with his prior statements.

17 MR. CURRAN: The issue or the concern I have is
18 that if she asks the questions in the form of during the
19 motion for new trial you advised me that Callahan told
20 you --

21 MS. SCAPICCHIO: I know I can't do that.

22 MR. CURRAN: You did it in the motion for new
23 trial, throughout the motion for new trial, and you were
24 chastised by Judge Rouse.

25 THE COURT: She won't do that here.

1 MS. SCAPICCHIO: That's a criminal proceeding, not
2 a civil proceeding. We tried this whole case, and that
3 never came up, not even once.

4 THE COURT: If David Meier has admissions of
5 Callahan, then you can have that. The keeper of records
6 issue is a little bit more complicated.

7 MS. SCAPICCHIO: I think the keeper of the records
8 issue, Judge, becomes more of an issue based on your ruling
9 of whether or not Beauchesne got the information or didn't
10 get the information and whether or not it was reasonably
11 foreseeable.

12 That now I think will play into the plaintiff's
13 case as to the state of the file. I think that becomes more
14 of an issue if the instruction is that Callahan didn't have
15 to put it in the hands of Beauchesne, but we can argue that
16 it was reasonably foreseeable by giving it to D.A. A than it
17 would ever get to D.A. B. The state of those files do
18 become important.

19 THE COURT: Okay. But then the only question
20 about the state of the files that I need some guidance about
21 is there's an '88 conviction.

22 MS. SCAPICCHIO: Yes.

23 THE COURT: Was the file -- will Meier or anyone
24 else in the D.A.'s office testify that the file was
25 untouched between '88 and '94?

1 MS. SCAPICCHIO: I don't know the answer to that
2 question. My understanding is that Paul Linn took it over
3 on appeal. He had it on appeal for a period of time. There
4 were no disclosures made while he had it on appeal. When
5 the third motion for a new trial was filed, David Meier took
6 it over.

7 THE COURT: Okay. So if you have a consistent
8 story, consistent witnesses from here's the person who was
9 in charge of it at trial, here's the person who was in
10 charge of it on appeal, here's the person who took over on
11 the motion for new trial, and then there can be
12 cross-examination that it was really their recordkeeping was
13 awful, and, therefore, this was a function of bad recording
14 keeping rather than it wasn't in the file. I don't know. I
15 need to hear that testimony to know.

16 It seems to me as a matter of logic, if you can
17 tell a consistent story as to what happened to the file, you
18 can have Meier talking about the file when he came to it,
19 then the cross-examination would be that doesn't mean it
20 wasn't there in '88.

21 MS. SCAPICCHIO: Exactly. Exactly. I think
22 that's fair.

23 THE COURT: That's very limited testimony. It was
24 what's the state of the file, what did Callahan tell you,
25 and that's it.

1 MS. SCAPICCHIO: Yes.

2 MR. ROACHE: One final thing.

3 THE COURT: And Meier is obviously not a witness
4 that is to be led because he's not the defendant.

5 MS. SCAPICCHIO: Absolutely.

6 MR. ROACHE: Your Honor, I'm hearing a lot about
7 arguments, and I just want to make it clear that the purpose
8 of the opening statement is not to present argument.

9 THE COURT: She knows.

10 MR. ROACHE: Well, your Honor, I want to make it
11 so that I don't have to get up and object during
12 Ms. Scapicchio's opening statement when she starts arguing
13 about --

14 MS. SCAPICCHIO: You already did that.

15 THE COURT: No, we've been here before. This is a
16 much more narrow case. I've already said to Ms. Scapicchio
17 in sort of out of my role in a way that not only is this a
18 much more narrow case because there is a verdict on other
19 issues, but there were certain parts of her case which were
20 in fact weak as can be, and she shouldn't be going over that
21 again because they were a waste of time. Now, you can
22 listen to me or not.

23 MS. SCAPICCHIO: Judge, how do you want us to
24 refer to the first trial when we're cross-examining
25 witnesses?

1 THE COURT: Another hearing.

2 MS. SCAPICCHIO: Another hearing. I wasn't sure
3 what we were going to do with that. In fact, my binder said
4 Drumgold retrial, and we just purged it of all references to
5 that so no one would see it. Okay, You still have 15
6 minutes.

7 MS. HARRIS: Can I ask one final question?

8 THE COURT: Yes.

9 MS. HARRIS: I'm assuming that because of the
10 prior verdict that we can treat Mary Alexander and Tracie
11 Peaks like we treated all of the other witnesses?

12 THE COURT: Yes.

13 MS. HARRIS: In other words, Mary Alexander's
14 brain tumor is not going to be referenced to anybody?

15 THE COURT: Yes.

16 MS. SCAPICCHIO: Not unless you bring it up with
17 Rappaport.

18 THE COURT: The only issue that I said is that as
19 I understand, I understand Ms. Scapicchio's case is that at
20 the time Officer Callahan came into the case, the case was a
21 mess, and so the only thing is there was no statement of the
22 defendant. Why is another issue. She doesn't get into the
23 why. There were no witnesses who did any identification,
24 and there was a city that was inflamed over this case. She
25 can start the story from there because it sets up the motive

1 and the pressure on the police, but that's it.

2 MR. CURRAN: It creates an issue to the extent
3 that the inferences that we would go back to what exactly
4 did exist.

5 MS. HARRIS: What there was, which was the
6 Tracie Peaks' statement, among other things.

7 MR. CURRAN: Which is the Tracie Peaks'
8 identification.

9 THE COURT: Tracie Peaks' identification was in
10 play by the time Officer Callahan?

11 MR. ROACHE: Oh, yes.

12 MR. CURRAN: Mary Alexander picked up the photo
13 three times, and her trial testimony is --

14 MR. ROACHE: Vantrell McPherson.

15 MR. REILLY: That's all in the trial transcript.
16 The trial transcript is in, and that evidence is there, and
17 that's what it is.

18 THE COURT: Nothing is in now.

19 MR. REILLY: Right, I'm sorry.

20 THE COURT: And I have to go back over this, but
21 you can certainly start the story from the moment Officer
22 Callahan took over, and, you know, portray what he was faced
23 with in the light of that, but you're not going through, you
24 know, Mary Alexander's --

25 MS. SCAPICCHIO: I have no desire to.

1 THE COURT: Really because that was really awful.
2 Now, I'm going to leave. Goodbye.

3 MS. SCAPICCHIO: 15 minutes?

4 THE COURT: 15 minutes.

5 (A recess was taken.)

6 (THE FOLLOWING OCCURRED IN THE COURTROOM:)

7 THE CLERK: All rise. United States District
8 Court is now in session.

9 THE COURT: Okay. You can be seated. We'll do
10 this plaintiffs first, then defendants. You have three on
11 each side Ms. Scapicchio.

12 MS. SCAPICCHIO: Thank you, your Honor. Our first
13 strike would be to juror No. 11, Laurin Gibson.

14 THE COURT: Laurin Gibson, No. 11. Ms. Harris.

15 MS. HARRIS: No. 6, Brooke Robinson.

16 THE COURT: No. 6, Brooke Robinson.

17 Ms. Scapicchio.

18 MS. SCAPICCHIO: Our second strike, your Honor,
19 would be juror No. 19, Patrick Brennan.

20 THE COURT: Patrick Brennan, 19.

21 MS. HARRIS: And for the defendants, your Honor,
22 No. 9, Tracy Collins.

23 THE COURT: No. 9, Tracy Collins.

24 MS. SCAPICCHIO: Your Honor, with respect to
25 No. 9, she's one of two African-American women on the jury,

1 and I'd ask that you ask the defendants to provide a race
2 control reason for challenging her.

3 THE COURT: Who is the other African-American
4 woman?

5 MS. SCAPICCHIO: The other African-American woman
6 is No. 4, Brenda Leighton.

7 THE COURT: Okay. Your next challenge, well, your
8 next challenge. Let's go on and see what else they do.

9 MS. SCAPICCHIO: You want my challenge?

10 THE COURT: Yes.

11 MS. SCAPICCHIO: My next challenge would be juror
12 No. 5, Stephen McLaughlin.

13 THE COURT: And yours?

14 MS. HARRIS: No. 1, your Honor, Zachary
15 Coseglia.

16 THE COURT: I'm not going to say that challenging
17 one of two African-Americans in the pool triggers a Batson
18 analysis. Your last challenge?

19 MS. SCAPICCHIO: That was it.

20 THE COURT: You did 5, and your last challenge was
21 1, okay. All right. The jury is Brenda Leighton, No. 1;
22 Clifford Dsousa, juror No. 8; I'm sorry, Brenda Leighton is
23 1; Dsousa is 2; Erin O'Leary is 3; Mark Troia is 4;
24 Cheryl Millard is 5; William Scott is 6; Patricia Longo is
25 7; Michael Quigley is 8; Donat Gilbert is 9; Scott Lombardo

1 is 10; Debra Slade is 11; Karen Bresnahan is 12;
2 Mary Schiappa is 13; and Stephanie Malaver is 14. That's
3 the jury.

4 We have to decide, there could be 8 with a jury of
5 4 alternates. In a civil case with 14, 2 need to be
6 alternates in a civil case because the jury shouldn't be any
7 bigger than 12, could be as little as 8 but shouldn't be any
8 bigger than 12.

9 MR. ROACHE: Your Honor, we had all 14 deliberate.
10 We lost one during the course of the trial.

11 THE COURT: That's really up to you if you want to
12 have a jury of 14, that's fine. All right. That's the
13 jury. I'm going to include in my instructions to the jury
14 at 6:00, I'm going to write this out, and I'll make it as an
15 order. I want to make sure that because I didn't have a
16 chance to address the jury because they left for the day
17 yesterday or today, I want to make sure that they know not
18 to read about the case, not to watch anything, not to
19 Twitter, I got a whole long list, not to go online, not to
20 do any Internet research, et cetera, so I will put that in
21 an order which Mr. McAlear will read, okay, otherwise we'll
22 see you at 10:00. I have to swear in some citizens.

23 THE CLERK: All rise.

24 (A recess was taken.)

25 THE CLERK: All rise. United States District

1 Court is now in session.

2 THE COURT: You can be seated. So, first of all,
3 we have to commend my courtroom deputy. Apparently she ran
4 down the street in her heels trying to find you.

5 MS. SCAPICCHIO: Thank you, Maryellen.

6 THE COURT: It occurred to me from reading my own
7 book, The Law of Juries, there is no such thing as a civil
8 jury in federal court with alternates. Rule 48, the way it
9 works is that a jury must have at least 6 and no more than
10 12 members, so because the minimum is 6 and the maximum is
11 12, that builds in alternates. The last time we had 13, we
12 selected 13, one person was excused for illness, so we wound
13 up with a jury of 12.

14 MR. ROACHE: No, it was 14, your Honor.

15 MS. SCAPICCHIO: We ended up with 13.

16 THE COURT: No, that's not what the records say,
17 so we didn't have to confront this. In any event, it's
18 crazy to have a jury of 14. It seems to me it needlessly
19 complicates this. What I would like to do then is since
20 we've selected 14, and because in my judgment selecting a
21 jury is a relative determination, not an absolute
22 determination, if you all wish to exercise your peremptory
23 challenges again, bearing in mind now that you're only going
24 to go to 12, I'll let you do that. Alternatively we can lob
25 off, not a good way of putting it, but jury 13 and 14.

1 MS. HARRIS: I'd go for the latter option, your
2 Honor.

3 THE COURT: Because you're tired and you want to
4 get back to your office?

5 MS. HARRIS: Yes.

6 MS. SCAPICCHIO: Could I suggest a third option?

7 THE COURT: Yes.

8 MS. SCAPICCHIO: Could we each exercise another
9 peremptory challenge?

10 MS. HARRIS: That I think was the first option,
11 but if you would entertain it, we would object because we
12 never would have gotten to the last two had we followed the
13 rules, so I think in fairness, the last two ought to have
14 been excused.

15 THE COURT: Yes. It's conceivable you would have
16 made different judgments as to the whole pool, so I have to
17 go by agreement now. I mean, in other words, the right
18 thing to do is now to wipe this out and have everybody
19 exercise challenges again which sounds like you don't want
20 to do or your proposal, last two by agreement or
21 Ms. Scapicchio's proposal, additional peremptory challenges
22 by agreement.

23 It seems to me, in other words, the only way that
24 I can make up for the mistake that I made is by starting all
25 over again with the peremptory challenges, otherwise we have

1 to do either proposal by agreement.

2 I should say one other thing, too, that on
3 reflection, and I hate to needlessly complicate things, I do
4 believe that the strike of Tracy Collins, the defendants
5 ought to justify that strike, and I want to give you an
6 opportunity, and the reason for that is this has been a
7 jurisdiction with issues with respect to African-American
8 representation.

9 There are only seven percent of minorities in the
10 pool that we draw from. We typically wind up with a jury of
11 three or four percent, so going from two African-Americans
12 on the jury to one, it seems to me is not an insignificant
13 step.

14 MS. HARRIS: I'm happy to address it. I can do it
15 now or I can do it later.

16 THE COURT: Why don't you address it now.

17 MS. HARRIS: I didn't think she liked me, that was
18 my main reason, and when we first went through the entire
19 pool, we had Lanita Foley, who I assumed, and maybe my
20 assumption is incorrect, but I assumed that she was a person
21 of color. We also have Mr. Dsouza, who I believe is a
22 person of color. I don't believe that her race should be
23 dispositive one way or the other. It was my feeling that
24 she was disinclined to listen to me or to give me a fair
25 shake. It was a complete personal reaction.

1 THE COURT: Okay.

2 MS. SCAPICCHIO: Judge, just for the record, I
3 would note that she is the only African-American juror that
4 is from the City of Boston. She's the only inner city juror
5 that was summonsed that showed up today. I don't know if
6 she was the only one on the summons, but she's the only one
7 that showed up today.

8 MR. CURRAN: The other issue, Judge, is she grew
9 up in the South End where a lot of the parties in this case,
10 although she didn't identify knowing anybody, but she grew
11 up at a time our case is the city was under the siege of
12 violence, and the cops were overworked, and I have an issue
13 of her sitting here as a juror under the circumstances.

14 At the same time I would note that all the jurors
15 who came in here over the course of two days, they were
16 always very polite and came, they sat down, and what brought
17 our attention to her right away was where she sat in the
18 jury room with her arm back, kind of had an attitude from
19 the beginning.

20 THE COURT: Okay.

21 MR. CURRAN: One, this is a civil case, this isn't
22 a criminal case, in regards to this type of challenge, but
23 there are numerous reasons, numerous reasons. We didn't
24 challenge the juror from Phillips Andover who was
25 African-American. We had every intention on keeping her on

1 this jury. She called in because of the pressure at work.

2 THE COURT: That was Ms. Foley, yes. I'm going to
3 accept, I'll accept your reasons. I just thought that it is
4 subject -- it's important to scrutinize this given the
5 nature of the jury pool in federal court, so do you want to
6 take a moment?

7 The other thing is just, again, on the record
8 Mr. McAlear is going to read the following to the jurors on
9 the 1-800 number, he'll say, "You may not obtain information
10 about this case other than any information obtained in the
11 courtroom during the trial of this case. You may not read
12 about the case, watch television, conduct research on the
13 Internet or in any other setting. You may not communicate
14 about this case in any form during your service as a juror."

15 The latter sentence is to deal with the Twittering
16 juror, you're trying to cover all bases. Do you want to
17 take a minute about whether you can come to an agreement, if
18 you cannot come to an agreement, then I'm going to have you
19 exercise your challenges again.

20 MS. HARRIS: If I could just ask your Honor, when
21 you say we'll exercise the peremptories, again, you're
22 saying that we'll exercise three out of this body?

23 THE COURT: Yes.

24 MS. HARRIS: How is that going to leave us with a
25 different result?

1 THE COURT: You're right. No, what happened is
2 that the first 12, bearing in mind -- no, wait a second, if
3 what you're saying is that had I known it was going to be
4 12, we would have stopped at Karen Bresnahan.

5 MS. HARRIS: And would have never gotten to the
6 last two.

7 THE COURT: And would have never gotten to the
8 last two, that's actually right. Is that right, Maryellen?

9 MS. HARRIS: We would have ended with
10 Ms. Bresnahan.

11 THE COURT: So, under those circumstances, I can
12 strike Mary Schiappa and Stephanie Malaver, and that's what
13 I will do. In other words, had I known that we were only
14 selecting 12, I would have stopped after Ms. Bresnahan.

15 MS. HARRIS: That's right.

16 THE COURT: So the jury then is Leighton, Dsousa,
17 O'Leary, Troia, Millard, Scott, Longo, Quigley, Gilbert,
18 Lombardo, Slade and Bresnahan. That's all I called you back
19 for. Thank you very much.

20 THE CLERK: Thank you.

21 (Whereupon, the hearing was suspended at
22 2:50 p.m.)

23

24

25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS)
CITY OF BOSTON)

I, Valerie A. O'Hara, Registered Professional
Reporter, do hereby certify that the foregoing transcript
was recorded by me stenographically at the time and place
aforesaid in No. 04-11193-NG, in re: Shawn Drumgold vs.
Timothy Callahan and thereafter by me reduced to typewriting
and is a true and accurate record of the proceedings.

/S/ VALERIE A. O'HARA

VALERIE A. O'HARA

REGISTERED PROFESSIONAL REPORTER

DATED APRIL 28, 2011